

## COUNCIL MEETING

July 6, 2011

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Furfaro at the Council Chambers, 3371-A Wilcox Road, Līhu'e, Kaua'i, on Wednesday, July 6, 2011 at 9:31 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum  
Honorable Dickie Chang  
Honorable KipuKai Kualī'i  
Honorable Nadine K. Nakamura  
Honorable Mel Rapozo  
Honorable JoAnn A. Yukimura  
Honorable Jay Furfaro, Council Chair

### APPROVAL OF THE AGENDA:

Mr. Bynum moved for approval of the agenda as circulated, seconded by Mr. Chang, and unanimously carried.

### MINUTES of the following meetings of the Council:

Council Meeting of June 1, 2011  
Special Council Meeting of June 15, 2011

Mr. Rapozo moved for approval of the minutes as circulated, seconded by Mr. Chang, and unanimously carried.

Council Chair Furfaro: Thank you. Mr. Clerk, before we go to the few items here, unfortunately we have a very full agenda, but we also have keonowa'a today, which is the arrival of several Polynesian sailing canoes to the north shore, as with the mayor will be there to be greeting them, along with some of his staff. Whether we refer to them as wa'a or vaka, depending on what part of Polynesia you're from, we are honoring the mayor's request to have the parks and recreation director in Hanalei with him today. So I'm going to move only one item on today's agenda which is communication 2011-199. Mr. Clerk, can we make reference to that, please?

There being no objection, Communication C 2011-199 was taken out of order.

PETER A. NAKAMURA, County Clerk: Mr. Chair, at this time we're on page 2 of the council's agenda for Communication 2011-199.

### COMMUNICATIONS:

C 2011-199 Communication (06/08/2011) from Councilmember Chang, requesting agenda time for the Administration to provide the Council with a status report on the Lydgate Pond Restoration Project.

Council Chair Furfaro: Thank you very much. Gentlemen, I would like to acknowledge if that's fine with all of you and ladies, the possibility of suspending the rules and asking Mr. Lenny Rapozo to come up on behalf of the administration.

There being no objection, the rules were suspended.

LEONARD A. RAPOZO, JR., Parks & Recreation Director: Good morning.

Council Chair Furfaro: Aloha, good morning, Lenny, this is a communication from Mr. Chang and I believe the real intent here is to provide the council with the status report of the Lydgate ponds. If any exceptions, amendments, changes are going to occur, we'd like to get an update and since this communication came from Mr. Chang, I will afford him the first to speak after your quick presentation.

Mr. Lenny Rapozo: Okay, for the record Director of Parks & Recreation Lenny Rapozo. Can I please provide this for staff?

Council Chair Furfaro: Yes, staff, we have some materials. You have the floor, Lenny.

Mr. Lenny Rapozo: Thank you. Before you, since we opened the ponds on May 28th, there have been some concerns regarding turbidity and what has transformed in the pond. I provided for you the report that was given to us by the Department of Health relating to the water samples that were taken prior to the pond being opened on May 28th and since that time, the dates that the samples have been taken. Now the...if I butcher the scientific names, for the sake of a better term, the bacteria in the pond which would be the third column is noted as entero...

Ms. Yukimura: Coccus.

Mr. Lenny Rapozo: Thank you very much. So when we opened the ponds on May 28th, the levels of the ponds were acceptable. And as you can see there, the levels had decreased to where on the 29th it shot up again and I believe we had some rains during that time. What has been the concern is the turbidity, and the turbidity, of course, is the sediment in the water, "light blockage" for a common's man term and what we're having there is the silt in the water. So as you can see when we opened the ponds on the 28th, it was 24.9 in terms of turbidity, and then the turbidity went up and then it went down, and as low as June 22nd, it was at 4.5. I think it's interesting to note that even before we opened the ponds and after we opened the ponds, turbidity levels have never been really consistent. I can tell you that right now as far as this report, that's basically what I wanted to capture and bring to your attention.

The second page is a picture of a county excavator and what you are seeing is the pond inundated with wood. This picture was taken in November of 2009. And part of the reason for redoing the ponds is (1) we wanted to rebuild it to what it was supposedly in 1964 and return the depths a little bit deeper, but also to give us help with preventing what you're seeing in this picture. I can tell you that after big rains, this is kind of typical, which we, as the county, provide the equipment and the volunteers, the Lydgate volunteers who go down there on a weekly basis to clean that. We have to not only clean the ponds, but we cannot go as far into the pond with our machines to clear it out, so we're working with tides and all of this, and then we have to dispose of the matter or the debris that we pull out, in terms that it's costing us to go and recycle with the vendors. More importantly, a lot of times when this occurs, we have dead animals coming from up Wailua River that settle in the ponds, which poses another type of health risk. So this I wanted to show before what we did at the pond.

The second page is what we have there today. Now there's talk about there's no flowage of water. This picture shows the ripples, the little waves. I have a report that I spoke to Oceanit, who was the consultants on the job, and their report or their synopsis assured what we had...when we started the project that the rocks that were there at the pond-level allowed water to flow back and forth. Those rocks were never changed. So underneath the wall that you see in the background, the movement of the water still occurs beneath the wall. The wall above the water level was made such to prevent the wood and dead carcasses from entering the pond as a protection.

This already occurred and we saw some of the positive effects. When this project was going on we had the big rains, and there was wood that was outside, never made it into the pond. There were two dead mountain pigs outside that never made it into the pond. So I believe this has been a positive effect. And then finally in the middle of the pond where there is the deepest portion that was dredged to about 7 to 9 feet, that appears to be where the most concentration of the turbidity still lies. The consultants and myself, we believe that over time as these fine silt materials settle and sand comes upon and covers the silt, that also will disappear.

To help the public, to educate and to warn that now we have a drop-off there, the last page is a sign that was placed there by water safety officials to help warn the public that now there is a drop and it's not like what it was before.

Now I would just like to note that the rocks from the wall, these are not new rocks brought in to the facility. These were not rocks that were taken from outside of the ocean. But these are materials that were taken from within the pond. The pond is not a natural made pond. It's something that is manmade. Therefore, it was done prior to the laws of what we know today. And so the materials that were used to rebuild the wall came from directly within that pond that had fallen into the pond over the years, which they say the pond was built in 1964. So that's a brief update as to Lydgate, the pond. I'll entertain any questions.

Council Chair Furfaro: Okay, as mentioned, this communication came from Mr. Chang, so I will recognize him first on particular questions to be posed.

Mr. Chang: Thank you, Chairman, and thank you, Lenny, for being here. The reason I wanted to put this on the agenda was I had calls immediately after we opened on Memorial Day, which I called you right during that weekend, and also some calls from the community. And I guess the main concern is the turbidity that you mentioned within the 7- to 9-foot deep kind of bowl in the middle of Lydgate. If the councilmembers can look at this, the wall—and thank you very much for showing us this illustration of the wall—I don't believe that the general public or if you haven't been out to Lydgate, I don't think everybody realizes, but the wall, when you see that light sort of coming in like at about 11 o'clock, that from the waterline to the top is about 5 feet high, maybe a little over 5 feet high. In the middle area where you see like the higher mound, that's maybe a little over 6 feet high. But I was actually very surprised, but the wall is actually about maybe 15, 16, maybe even upwards to 18 feet wide. It's a huge wall. And I was on the wall yesterday. I left the wall at about a little after 10:30 a.m. and the +2 foot tide was supposed to come in at about 12 o'clock. So I got a little bit of an illustration of the waves pounding the rock wall, trying to make its way over the wall. But my, I guess, a little bit of my concern was the wall is so thick and now it's pounded down and solid that when I saw the waves coming in, I didn't really see much turbulence or much water moving thereafter. It just seems that they couldn't work its way through the crack because the wall is so thick. And quite honestly, when I swam in and around the area, I was swimming with my goggles and snorkel

in my right hand and just kind of kicking because I couldn't see anything anyway. So my concern was the circulation and I guess speaking to everybody else, over time it will sort of kind of heal itself, but it is a very, very sudden drop. And speaking to people over the past couple of weeks or days, if you go to the last page—and thank you for bringing this last page—I think what's very alarming to the local people is local people were and always have been used to using the pond, and for them to see a sign that says, sudden drop-off, bottom drops off abruptly, you could drown, and a lot of the people are kind of used to it being the way that it was, and it's going to take time, you know education and what have you. So I guess my first question for now is prior to us dredging, was there like a game plan or did we tell the people what we were hoping to expect with the expedition of the dredging process:

Mr. Lenny Rapozo: There wasn't any kind of community meeting for project, no. But again, I'd like to reemphasize that the pond breakwater wall was not constructed to prevent the exchange of water. In fact, it is comparatively porous both to the water and to the fish. The submerged portion, like I had mentioned earlier, has sufficient void and spaces or pukas between the rocks that allows adequate water exchange along the length of the wall. And the rocks from the top part of the wall, those rocks over time dislodged and pushed into the pond by the heavy wave action that you noted. And those are the rocks what were picked up and placed on the wall as part of rehabilitating and restoring the wall to its original height. None of the work, and this comes from Oceanit, none of the work was done in the lower portion of that wall that takes place to prevent water exchange.

And I, like you, take my children down there, and two weekends ago we were there, and I did what we're not supposed to do, is palu the water a little bit to see if there are fish and there are fish. There was at least a nice school of a hundred āholehole, some palanis and that angel fish, they were there. So we believe that over time everything won't return, but the effects I believe of the wall is positive in that it's going to, over time, prevent us from having all the logs and the debris that comes in, and with the help of our volunteers, who are very dedicated to this area, it's going to help them in cutting down their work, having to haul all of the wood up and we provide the roll-offs, you know?

When I went and met with some of the concerns, I got calls, like you. And mostly, if you were there the first weekend we opened the pond, and when we got the calls to the very next week, you could see vast improvement in the water quality. It appears now, and I believe that as the tides and currents, depending on which way the current is, eventually everything is going to get cleaned out.

Mr. Chang: If you look at the map of the Lydgate Pond, Morgan's pond, to the left is the baby pond. Was there an opening at one point in time prior to the stacking of the walls, was there an opening between the little baby pond and the main pond?

Mr. Lenny Rapozo: No, there were always rocks in-between. It might have been porous. And just to note when I was there with my family two weekends ago, the waves were big enough that they were crashing over to the section—if you look at the picture where you can see some of the top of that waves coming in—waves did crash over the top. So it may be high, but not high enough, in my opinion, that so at some point some of the waves can get over it.

Mr. Chang: Yeah, and again, I just wanted to say, I was there yesterday just prior to the 2-foot high tide and I have to just say when the waves crashed against the wall, and I was in the pond side, honestly, I didn't really see

much turbulence or any boiling or any...again, I was surprised how thick the wall actually and wide it is, that I couldn't see it making its way into the pond. That was my evaluation. Thank you, Chair.

Council Chair Furfaro: Lenny, before I acknowledge other members, can I ask you...

Mr. Lenny Rapozo: Sure.

Council Chair Furfaro: This dialogue you've been having with Oceanit, did they describe to the administration that this process of changing currents and clarity that we would like to have for tropical fish that might be in the lagoon, did they give you any kind of estimated cycle? Is it six months? Is it a year from now?

Mr. Lenny Rapozo: They said several months. That's the term that they used, several months, Chair.

Council Chair Furfaro: Several months, okay.

Mr. Lenny Rapozo: Maybe I can explain a little bit about the project, yeah. Initially the project, when we dredged the pond, the project was to take the sand from the pond that we dredged and to do beach nourishment to enhance the beach. After they started to excavate three feet beyond, all of the silt came up. And I guess no one had anticipated we were going to have this material. We thought we were going to have all sand and we were going to do this nice beach nourishment for everyone. Department of Health said, well, this cannot go on the beach. So we had to get it off the beach. But we continued the project as to what we wanted to do in terms of dredging the pond. So, if we anticipated the silt matter? No, we didn't. We had intentions of doing a nice beach nourishment to enhance the beach experience as well as trying to return the ponds to what we believed to what it was like back when it originally opened. And after we had completed it, then we believed, in talking with Oceanit, that eventually it's going to clean out again and it will be okay.

Council Chair Furfaro: Okay, just to follow up on that, in Mrs. Torii's class in Waianae, we learned a couple is two, a few is possibly three, several is more than four. Would you say we can revisit the ponds let's say in six months?

Mr. Lenny Rapozo: Sure.

Council Chair Furfaro: Okay. Councilwoman Yukimura or Mr. Bynum, did either one of you...Mr. Bynum, you have the floor.

Mr. Bynum: Thanks for being here today, Lenny. I wanted to share some of my observations with you up there so you can correct me if I get it wrong, but I go back with this issue a ways, because I'm a frequent visitor to Lydgate for over 20 years and something dramatic happened with Hurricane Iniki; it was overnight. And some people remember a huge tree, the biggest tree I've ever seen, bigger around than this table, straddling the top of that wall right after the hurricane. And so the hurricane drew these huge logs into the ocean that slammed into the wall and, you know, lowered it by 3 or 4 feet just in a matter of days. That huge log was sitting there for months and some people remember this because it was a great play thing. You can climb up on it and actually dive into the pond and at that time the pond was 12 to 14 feet deep at the back end and with little canyons between boulders and lots of fish. For years there was a nice big school of uhu there that was like one of the best things. But right after that happened, many of us

started seeing the depth was changing. Those rocks that were big canyons, eventually you could only see the tops of them. And this wood that came in like this, this happened repeatedly every year for the last 20 years. And I got to acknowledge I was really glad to see John Lydgate come in with Bruce Netzer. These men worked down there every single Saturday with a tremendous group of volunteers. It's just amazing the amount of sweat equity that has gone into this and this (inaudible) developer that the county brings out a roll-off and if you've been involved in this volunteer, hundreds of people stacking wood into this roll-off, putting it on carpets, grooming the beach, keeping it nice, but often the health department has had to close it because this organic material comes in; it makes the bacteria level go up, and some of that, in my view, settled to the bottom and filled. And so when we started dredging we found not as much sand as we thought and more organic material and silt. But it was also a situation where long-term users who swim laps down there and swim back and forth were hitting the bottom on the crawl. In a few years we wouldn't have had a swimming pond there and I don't need to say to anybody how important that facility is to the people who live on the eastside. It's the safe swimming area. And the efforts to get this fixed took like 15 years and you hinted at it. We could never build a pond like that now. Environmental laws would not allow it and it started back during Kusaka's administration to work with the Army Corps and the federal people to get permission to act in the ocean. It had to be repair and maintenance. It had to be just the rocks from the inside. You couldn't do these other things. And so it took a lot of years to get this permission to get this done and it's unfortunate that there's turbidity and the bottom isn't all sandy, but also the kind of drop-off and the amount of rescues that, times that the lifeguards need to get involved will go up because that's a new things. You can't wade all the way to the back wall at waist high. But that's the way it was 20 years ago as well. It was deep in the middle and whenever the sand falls off into over height, it's going to be a challenge for the lifeguards, and luckily we have a great lifeguard team there.

So basically I heard the synopsis was we didn't find as much sand as we liked, that changed the plan some. It's kind of mucky in the bottom in the middle, but the coastal engineers feel like nature will smooth out the abruptness and eventually these things will settle. Is that the short version?

Mr. Lenny Rapozo: Yes, exactly. And I think what you have mentioned, that pond was built over a generation ago and we take it as being natural. But it's not natural. It's a manmade thing. The pond is built to provide a calm, safe area for everyone to enjoy and swim. And the fish, and also the pond with the wall provides a protection against predators outside of the pond. So it stands to belief that eventually the types and the quantities of fish will return because people will feed them and that's where the food is and it provides a safe haven from predators, so it stands to belief that the fish will come in the sizes and the different varieties. And I've seen it already, so.

Mr. Bynum: And the Mokihana Club years ago put the display sign of the fish that are in the ponds. Unfortunately the uhu went all in one weekend when some thoughtless people came in there and spear fished them in the pond. That's like shooting ducks in a barrel, right. And I know there have been community efforts to try to, and I don't know what the status is, but say hey, you don't fish in this pond. Just for logical reasons, you don't want to leave tackle and hooks where kids are playing.

Mr. Lenny Rapozo: Right.

Mr. Bynum: But we're all hopeful it will return to a state that's a little more pristine. It makes sense to me that eventually things will settle, but also at the way the condition of the bottom is now, it's going to get stirred up if people go down there and...because it's kind of...we're used to sand there. It's kind of mucky right now. So thanks for the report.

And I just have to again acknowledge John Lydgate. He's an amazing guy. Literally, tens of thousands of hours of volunteer effort that goes down there, it's amazing that 100 people will come out and work really hard for four or five hours to clean this up. And that kind of partnership that's developed...you know the Westside people were here today. We have those kinds of partnerships out there where the county takes care of the sports fields, but the community supports it too to keep them at a better level. And that's what we have at Lydgate and many parks, this kind of really good partnership where the volunteers are friends with the county workers who work down there. They're like 'ohana. Thanks, John. I hope you come up and testify and say something.

Council Chair Furfaro: Vice Chair Yukimura, you have the floor.

Ms. Yukimura: Yes, thank you for the history that both of you have given and for the efforts to keep this community resource usable. I did also get some concerns from citizens. And they were the same that have been raised on this table already this morning. The steep drop-off and I'm glad that the sign at least is posted now. Do you know when that was posted?

(?): Over the Memorial Day weekend.

Ms. Yukimura: That soon?

Mr. Lenny Rapozo: No, it was after. I believe it's...I think it's about a couple weeks ago.

Ms. Yukimura: Yeah, because I think citizens were...okay.

Mr. Lenny Rapozo: Couple weeks ago we did it.

Ms. Yukimura: All right because I got some complaints before that, but at least there's some warning now. That's good to those who are expecting it to be the same as it was before. And then in terms of the tidal interchange, I guess we'll trust the experts. It does look like there is some interchange and you don't want too much, otherwise the walls might come down again. So I guess to the public, the response is that we need to wait and let things settle out and then see what happens.

Mr. Lenny Rapozo: If you think about it, we opened it on May 28th. Last week made only one month, and if you look at the change...if you were there the day we opened it and the way it's like today, greatly different in one month's time.

Ms. Yukimura: That's a good point.

Mr. Lenny Rapozo: Of course, the deeper part is going to take a little bit longer because of the depth of the turbidity. But I believe for a month, the change has been really great. So we have to hope and believe that it will continue.

Ms. Yukimura: And actually, if you can hold up your photos, which are very illustrative, to the cameras, maybe members of the public can see what—I don't know how well they'll show up—but they are very...is that something you can...that's the before picture, showing all of the driftwood after a big storm, that's covering the park. And then the next picture is of the pond as it is today.

Mr. Lenny Rapozo: With the wave showing that there is movement.

Ms. Yukimura: There is some water movement and wave movement.

Mr. Lenny Rapozo: Yeah.

Ms. Yukimura: Okay. Thank you very much. And I do want to acknowledge and thank John Lydgate and the volunteers. It really is an extraordinary citizen effort that is keeping Lydgate, not just the pond, but all of the park so usable and...

Mr. Lenny Rapozo: I just want to add to the signs that the water safety guys even went, I think about a week or so ago, they added some orange streamers to draw attention, to try and hope that people...because I guess there were some people that just walk right past the sign.

Ms. Yukimura: Without looking at it?

Mr. Lenny Rapozo: Yeah, so now they have some streamers and water safety has done that to hopefully draw attention to that. I think it's a good thing. They need to know that it is deeper.

Ms. Yukimura: Yes, I think that's very important for public safety and it's showing the teamwork that's involved with the water safety team, the citizen-volunteers, and your efforts and the county.

Mr. Lenny Rapozo: And public works.

Ms. Yukimura: Public works, right. Thank you very much.

Council Chair Furfaro: The kōkua by all departments is well appreciated and I want to thank you for acknowledging that we'll get a report back from you in six months after the south and southeast swell. I hope you would keep measuring the particular water quality then as well.

Mr. Lenny Rapozo: The department of health continues to monitor.

Council Chair Furfaro: Well, you'll coordinate (inaudible)?

Mr. Lenny Rapozo: And then we continue to dialogue with them?

Council Chair Furfaro: Okay. Council member Kualī'i, you have the floor.

Mr. Kualī'i: Aloha and mahalo, Lenny. Thank you for providing these pictures. I especially like the picture where we're seeing the ripples at the sand and we can see that the water is pretty clear in the shallow parts, for sure, it's clear. When I saw this on the agenda and I wanted to see for myself, on Saturday I went. Hearing that maybe one of the concerns was that the wall was preventing the flow of the water, I thought that what I would end up seeing was that the pond



would be less full than it normally is. And it looks pretty normal and there were a lot of people out swimming on Saturday, and so I think already it's like you said. It's been a month or so, but I think it's in good shape and I'm interested to hear...now that it was on the agenda and the citizens know that, the community knows that it's the update on the pond. If there are such problems, maybe the community would have come today or maybe they are here to tell us about it. But for myself in looking at it on Saturday, I think it looks really good. And considering how it looked after the storms and stuff and to do this work so that we can prevent having to clean it out every time that in the long run is going to save the county a lot of money and a lot of headaches. So I just wanted to say it looks good and thank you.

Mr. Lenny Rapozo: Thank you. And it also provides the volunteers, I mean, I went down there one Saturday when this thing happened. I met with the volunteers and someone that had a concern. I mean they raked the beach. They literally raked the beach, our volunteers. And like Councilmember Bynum, he mentioned John Lydgate, but it's John and a bunch of people that are very dedicated. Chris, she likes the keiki pond. I found out Chris likes the keiki pond, so she makes sure our keiki pond area is really nice and clean. So it's a good partnership we have going with the county and our community. So we want to help them, as well as hopefully make it better for our community that uses it. We all grew up here. We all went to Lydgate. I rehabilitated my knee after my knee surgery at Lydgate pond. So it is a valuable asset for everybody.

Mr. Kuali'i: Yeah, it's definitely one of our most used beaches and most beautiful beaches, and the mixture of the local families as well as the tourists. You say the generation I remember as a kid going there and I think of it as a calm, safe area that we could go, a lot of us kids with just one of our aunties. I think she felt pretty comfortable having five or ten of us and be able to handle that because it was in this safe area.

Mr. Lenny Rapozo: Exactly.

Mr. Kuali'i: It was either Lydgate or Hanamā'ulu. Those are the only places and not just for the Eastside, but I grew up in Puhi and we would go out to Lydgate all the time as a kid. So thank you, thank you for your work, and thank you to all the volunteers as well.

Council Chair Furfaro: Okay, Lenny, I'm going to turn the floor over to Councilwoman Nakamura.

Ms. Nakamura: Hi Lenny, thank you for the update, just a question on the water quality summary that you provided. I just wanted to find out the acceptable values for the bacteria and the turbidity. Is that a DOH standard that you are using?

Mr. Lenny Rapozo: Correct.

Ms. Nakamura: And "acceptable value" that means there's no threat to our health?

Mr. Lenny Rapozo: Correct.

Ms. Nakamura: Is that what it means?

Mr. Lenny Rapozo: Yes.

Ms. Nakamura: Okay, so this chart shows that both the Enterococcus and the turbidity are below the acceptable values.

Mr. Lenny Rapozo: The bacteria levels, for the sake of an easier term to pronounce, are acceptable. Turbidity just measures the vision in the water. They haven't said that there is no unacceptable visual in the water. It just measures how...as light can pass through the water.

Ms. Nakamura: Okay, thank you.

Council Chair Furfaro: Okay, members, I'm going to, since we have an agreement from Mr. Rapozo that we will visit this in the first week of November at the council meeting, get an update, I'm going to release you, Mr. Rapozo, and take public testimony now.

Mr. Lenny Rapozo: Thank you.

Council Chair Furfaro: Thank you very much and please, again, convey the council is in session to those out in Hanalei.

Mr. Lenny Rapozo: We will.

Council Chair Furfaro: And certainly we hope for a great afternoon.

Mr. Lenny Rapozo: Thank you for allowing me to be here.

Council Chair Furfaro: Okay, has anyone signed up to speak on this or if there's anyone to speak, may I see a raise of hands? Okay. Come right up, young lady.

LUCIA EICHENBERGER: Hi, good morning.

Council Chair Furfaro: Good morning.

Ms. Eichenberger: Thanks to everybody, thanks...

Mr. Chang: Can you lower the mike?

Ms. Eichenberger: Like that? Thanks to Dickie Chang for inviting me and thanks for coming down yesterday and swim and actually look at the pond.

Mr. Chang: Lucia, can you state your name for the record, please.

Ms. Eichenberger: My name is Lucia Eichenberger and I swim over there every morning. I have for several years. I believe that the measure of turbidity that the DOH comes back with are absolutely meaningless because they only take a sample on one point in the pond, which is close to shore where the turbidity is actually less. They should sample all over the pond because the turbidity varies a lot. And actually when I swim from the left side of the pond to the right side of the pond, after a few strokes I kind of enter a cloud of mud. It stinks. It tastes terrible and I can feel it on my skin. It has not improved at all. That's my point. It has not improved at all since the pond has reopened.

If you look on the right side, the one that is clear is clear because it was never dredged. There is still sand on the bottom there. But in the center there is no sand and there is not going to be sand either because the little sand that might seep in through the wall is not going to make it to the center of the pond because there is no wave action. The little ripples are not enough to bring the sand in the center of the pond. And even if it did, it will mix up with the mud at the bottom.

And also as far as the bacteria and stuff, I have a rash, which is exactly the same rash that I used to have for swimming there after the storms. So I don't want to say maybe it's just a coincidence, but I'm not too sure that the water is that safe. And I haven't seen a lifeguard swim in there since the pond was reopened. I don't know if that means anything.

Anyway, it is our opinion that the water that trickles on the top of the wall and the water that seeps in do not allow enough water flow to exchange the water from inside to outside. I was told that when the sand was removed from the bottom of the pond, there was a layer of rocks that were acting as insulation between the sludge underneath and the sand on the top. When the sand was removed, these rocks were removed as well. So now we only have the mud, the sludge, whatever, on the bottom and that's the one that mixes up with the water.

Council Chair Furfaro: Excuse me, that is your first three minutes. I will give you a second three minutes now.

Ms. Eichenberger: Okay. When I spoke to an oceanographer, his opinion was that we need to put a membrane on the top of the mud that lies on the bottom, and put the sand on the top of that. Because every pond I've ever swam in has to have sand on the bottom in order to be clear. Otherwise it's like swimming in the water hazard at the golf course. That's basically what that pond is like because there's mud on the bottom.

So there are...this proposal: One is to put a membrane on the bottom and the sand we still have on the top. Another thing would be to open the wall on the right-hand side, to open a little a channel in the wall so there is more water exchange. That would probably be the easiest thing to do, to try to open the wall on the right side because the debris usually comes from the left. That's where the river is, on the left. So if we open a channel, a hole or whatever on the right side, maybe with more water flow, we could see the condition improving. Because as I have said, my experience as far as the smell of the water and taste of the water is that it has not improved. That is what we're concerned about and it's not going to improve. So that's a suggestion. Open on the right side and if it doesn't clear up, we have to go with a membrane and I realize that is a bigger issue. Okay? Thanks.

Council Chair Furfaro: Thank you.

Mr. Rapozo: I have a question?

Council Chair Furfaro: Sure, hold on one moment, we have a question.

Ms. Eichenberger: Okay.

Mr. Rapozo: Thank you for being here today. I guess your testimony raises some concern. I had already had some concerns because of Mr. Chang's observations and Mr. Rapozo's observations were entirely different. So I'm kind of concerned. But for you who swim in that pond every day, I think you're

probably the best person to ask because you are quite familiar with the current flow and all of that. In your opinion, in your experience, do you feel that the change in water exchange is there?

Ms. Eichenberger: No.

Mr. Rapozo: There is no water exchange?

Ms. Eichenberger: There is some water, you can see a little water that is bubbling, seeping through the wall, but I don't think that's enough. I haven't seen that helping the pond. Here I have a couple of pictures. When you swim there, you can't see the top of your hands. Not only you can't see the (inaudible), you can't see your hand. So that's how turbid that the water is. I don't think it has improved. I don't think there is enough water exchange.

Mr. Rapozo: And you mentioned the water quality samples that were taken by the department of health were taken from one spot only? How do you know that?

Ms. Eichenberger: Because I was told so and because also from the measurement that Lenny Rapozo, he didn't say it's four here, six there, 20 here, 50 there, he only gave you one measurement.

Mr. Rapozo: And I will follow up on that point with the department of health, but I would assume that if they're going to do a water quality test, it's going to be done at the most murkiest point.

Ms. Eichenberger: I've never seen a county worker swimming in the pond to get the water samples.

Mr. Rapozo: Okay. As far as fish, have you seen a reduction in the numbers of fish in that pond?

Ms. Eichenberger: First of all, even if there were a lot of fish, you couldn't see them because if you can't see your hand, you can't see the fish. Secondly, on the bottom, since the turbidity is so high, the water is colder and I don't know if fish like cold water or if they prefer... Anyway, I've seen two yellow fishes on the left side, and some blue fish, about five or six blue fish on the right side, and one gray about that big on the right side. There may be more, but you can't see them.

Mr. Rapozo: Before the change in the wall, did you see much more?

Ms. Eichenberger: Oh, yeah, it was beautiful before, yeah.

Mr. Rapozo: Okay, thank you.

Ms. Eichenberger: Okay.

Council Chair Furfaro: Thank you very much. Excuse me, Councilwoman Yukimura?

Ms. Yukimura: Aloha. Thank you very much for your testimony. It makes a lot of sense what you say and because you swim in that pond every day, you're bringing us some firsthand information. You have watched the department of health take samples?

Ms. Eichenberger: No.

Ms. Yukimura: Okay. So you know that it's just one sampling?

Ms. Eichenberger: Yes.

Ms. Yukimura: How do you know that?

Ms. Eichenberger: Because when Lenny Rapozo gave you the samples, he did not refer to different values in different parts of the pond. He gave you one value for each day.

Ms. Yukimura: Okay. So that is something we should verify from the department of health and I really appreciate your suggestion about...I mean it does make sense to me that if there's silt that's just being stirred up, it's not really going to disappear. And so the idea of maybe increasing the circulation somehow in a way that doesn't allow the driftwood to enter easily makes a lot of sense. I think we should follow up with those questions, so that at our next review in six months, some of those issues might be addressed or maybe even before then. Thank you very much.

Council Chair Furfaro: And just for members here, we will compose a letter to the department of health. Some of those particulars will identify at least five sample areas in the pond, the center, mid-depth and near the wall. You know, we are not engineers at this table and I have dealt with Hypalon rubber in ponds and lagoons on Moloka'i, and they're not the easiest to maintain. Perhaps we'll let the engineering people...we'll raise the question and let them offer the solution, if necessary. But I will send one communication dealing with the need for the state to have multiple points for testing, and we will write to Larry Dill, separate from our parks department, about the circulation issue as it is an engineering problem. It is not an observation that many of us can make as that being a solution. But thank you for your testimony and that will be in the correspondence. Mr. Chang, you have a question?

Mr. Chang: Thank you, Chairman. Lucia, thank you very much. We'd like to get a copy of your testimony, if we can please. If the staff can get a copy of the testimony? You make reference to the membrane.

Ms. Eichenberger: Yes.

Mr. Chang: The old existing rock bottom floor that was covered with the sand, have you since dove to the bottom? I mean, have you put your feet or hand on the bottom of the deepest area?

Ms. Eichenberger: You mean now, after the...

Mr. Chang: Yes.

Ms. Eichenberger: I haven't, but Oliver, who is not here, has and actually thanks for bringing it up. He says that if you stand up on the bottom of the pond, you sink about one foot. So it is like fast sand.

Mr. Chang: I'm sorry?

Ms. Eichenberger: If you stand up on the bottom of the pond, you sink about one foot. You sink. So that is the mud that is like quicksand on the bottom there. That's what Oliver told me. I can also add that one morning he was coming out from the pond and he wiped up his mustache on his white t-shirt and it came out brown, that just means that there is a lot of mud in the pond.

Mr. Chang: And one of the concerns that some of the community members when it first reopened described it to me as lo'i or a taro farm. And just to let you know, and the audience know, I stepped in that lo'i yesterday and sank to my calves. It's kind of the weirdest feeling of being in saltwater instead of being in a lo'i, but that's what that bottom feels. Now do you think that the fish can make its way through any sort of crack or what have you through the wall?

Ms. Eichenberger: There are a few fish in, but until the water gets clearer and we can see the bottom and see the fishes, it's kind of hard. Yeah, probably some fish can make it through, but you can't see anything, so it's hard. You can't see the bottom. Actually, there was a mention of (inaudible).

Council Chair Furfaro: Excuse me, your testimony period is over.

Ms. Eichenberger: Okay.

Council Chair Furfaro: And I would remind members to summarize and evaluate after the time is gone is not the course of this body. You may pose a question. They may respond to a question. Mr. Chang, your question was based on does the circulation allow a certain type of fish back into the lagoon?

Mr. Chang: Correct.

Council Chair Furfaro: Okay, please respond to that question.

Ms. Eichenberger: I don't know that because I don't know how big the holes are in the wall and right now it's so turbid that you cannot see anything.

Mr. Chang: Thank you.

Council Chair Furfaro: Okay, we will add that question to Oceanit, who were the consultants on the job. We will add that question. Are there any more questions for the individual here? Mr. Bynum.

Mr. Bynum: Yeah, I think I made the comment that prior to the dredging people who swim laps were hitting the bottom and you wanted to comment about that?

Ms. Eichenberger: Yes, because now you hit the bottom because you can't see. You can't see two feet in the water. So sometimes I would swim and I would just hit the rock because I can't see that there is a rock in front of my hand.

Mr. Bynum: Thank you.

Ms. Eichenberger: Thank you.

Council Chair Furfaro: Thank you very much. We have no more questions for you. Thank you very much for your testimony. But please remember, Mr. Chang asked if he could have a copy of your testimony.

Ms. Eichenberger: Okay.

Council Chair Furfaro: Thank you. Next speaker. Mr. Mickens.

GLENN MICKENS: Thank you, Jay, for the record Glenn Mickens. I thought the young lady's testimony was outstanding because I've heard the same thing from many people about what's going on down there down at the pond. So they having raised the wall, I thought was a great idea. I will wait until the next storm from the Wailua River and see whether it does, in fact, block the logs in the (inaudible) from going in the pond. But I did think that was an outstanding thing. But I'm not sure about the safety factor of dredging the pond to 9 feet. Kids now, you have the possibility of drowning in the place. So I'm not sure if that was a real good idea, but they did take some of those rocks off of the bottom of the thing that you were hitting when you were swimming, which I guess had fallen off the wall, which again was a good idea. And again, this pond, I think, it's one of the nicest places to snorkel and swim on Kaua'i and I think they should have more of them all around the island. I think it would be good. We still haven't heard how long the murkiness will remain in the water. I know, Lenny said it will probably disappear, but we haven't heard of how long. In other testimony, Dickie and this young lady, talking about sinking in that thing, I don't see how that is going to just disappear without putting another layer of sand or something. I don't know and as you say, Jay, putting a liner or something, then there may be...

Council Chair Furfaro: I didn't say that. The previous testimony indicated that was an option.

Mr. Mickens: Yeah and I don't think the...that may not be the answer. But having sand on that bottom is. And you still...I have guests here from California who used to go to the pond all the time. They loved it. And they went down there the other day and they said they wouldn't go in there that it's too murky. You can't even see the fish there and they walked a little bit in there and it's not even worthwhile going there. So they go to some other beach. So I do think that that has to be addressed.

You saw my article in the paper about the sand there at the pond by Lydgate. It should be cleaned. Even my guests said there were coke bottles, there's coke cans, cigarette butts, debris and stuff, things that volunteers can't even clean up. But those things definitely should be cleaned and I suggested many years ago to Mayor Kusaka that they take a beach cleaning machine like they have on Waikiki Beach. They clean that beach daily with that type of machine. They have one here, but she said we couldn't spend two hundred and some thousand, but they will bring that machine on an as-needed basis to be able to do it. So I think that's just a concern.

Anyway, I certainly appreciate this young lady's testimony. She has the expertise. She swims there every day, and to go down to that pond and have it in this kind of shape, the plusses were excellent, but maybe the negatives of what has happened are even worse. And I think that they should definitely be addressed at this stage of the game. Thank you, Jay.

Council Chair Furfaro: Okay, Glenn. Does anybody have a question for Glenn? Thank you, Glenn. Anyone else wishes to testify? Okay, please come right up.

THOMAS NOYES: Hello, Chair Furfaro and Councilmembers. My name is Tommy Noyes, and I serve as the general coordinator for the Friends of Kamalani and Lydgate Park. The following are my personal observations and please keep in mind that I have been a Kaua'i resident and diver for over 45 years and a volunteer with the Friends of Kamalani and Lydgate Park, but I am not a qualified oceanic coastal engineer. On July 2, 2011 I snorkeled in the ponds for the first time since the seawall reconstruction project was completed to check out the conditions. I would describe the visibility as poor, approximately 4 feet as opposed to my recollection of about 20-foot visibility prior to the work. I could not see any marine life.

There is concern over a perceived less healthy water quality. From my discussions with the Hawai'i State Department of Health, Clean Water Branch monitor Gary Ueunten, there are two measures of water quality that he regularly monitors at the swimming ponds, bacterial counts and turbidity. My understanding from Mr. Ueunten is that disease-causing bacteria levels have been within acceptable ranges following the reconstruction work and that the turbidity levels have fluctuated but are trending towards less turbidity. My understanding is that the pond's water quality approximately six weeks post-construction is currently visually unattractive but does not pose any health risk due to elevated bacterial levels. My willingness to swim in the ponds and stick my hands into the silt layers is evidence of my confidence in Mr. Ueunten's credibility.

The seawall reconstruction resulted in a deeper main pond and a seawall that now keeps most of the driftwood out of the ponds. There have been several unintended consequences. Instead of encountering a pure sand bed within the main pond, the excavator removed a blend of sand, organic material and silt. The silt was stirred up during the excavation and when the excavation activity ceased that silt settled mostly in the deeper areas of the main pond. I found a layer of soft silt as thick as a foot or so on the bottom of the deep part of the main pond and I could easily penetrate that with my hand or foot. The silt is not muddy. It does not stick to your skin; it just floats away. The silt layer feels sort of like loose pudding. Small stones, rocks and boulders are scattered within the main pond area.

Going forward it's difficult to predict how the ponds will adjust. Factors to consider, all the silt that is now in the pond was there prior to the work being done. It was just mixed in with the sand. No new silt has been introduced as a result of the work.

There is surge constantly flowing through the seawall. I expect that flushing will in effect over time clear the water. Sand has naturally accumulated in the ponds since the initial seawall installation in the 1960s. May I continue?

Council Chair Furfaro: Your first three minutes. Go right ahead, I'll give you your second three minutes.

Mr. Noyes: Thank you, Chair. The original seawall was higher and broader than the reconstructed seawall, as I understand. Only stones that were retrieved from the interior of the pond were replaced on the seawall and the stones that were scattered outside of the seawall were not retrieved.



My expectations are that over time the silt will be overlaid with a layer of sand, that the water will clear, and that the sea life will return. I cannot predict how long that process will take. Overall I am confident that this project was necessary to keep the ponds from being inundated seasonally with debris, including the carcasses of drowned animals like pigs and cattle flowing out of the island's interior on the Wailua River. The picture I'm including with my testimony from November 2009 is actually a photo that I took during one of the inundations and shared with other members interested in this situation.

The Friends of Kamalani and Lydgate Park volunteers have spent several thousands of hours voluntarily grooming the beach and clearing debris from the ponds area since 1994. We are committed to keeping the beach clean and inviting and I view this current situation as an unfortunate but temporary consequence of a necessary measure. Respectfully submitted, Tommy Noyes, General Coordinator, Friends of Kamalani and Lydgate Park.

Council Chair Furfaro: Tom, thank you very much for that testimony, thank you very much, and also this is probably the appropriate time for thanking the Friends of Kamalani for all your ongoing work. May we get...I know you referenced that as 2009, but I'm going to have a staff member collect that testimony.

Mr. Noyes: Sure.

Council Chair Furfaro: Thank you very much. Specific questions for Tom?

Mr. Rapozo: I have one question real quick.

Council Chair Furfaro: Mr. Rapozo.

Mr. Rapozo: Thanks, Tom, for being here today. I appreciate that testimony. What would your estimate be of the drop from the slope in the deep area?

Mr. Noyes: Earlier this morning I had a chance to take a look at some drawings from the consultant that Mr. Haigh has with him. You might want to refer to those drawings. I didn't really spend time trying to gauge the slopes involved. So I'm afraid I don't have a coherent answer for that.

Mr. Rapozo: Okay, is it substantial? Is it a noticeable drop? Or is it a gradual?

Mr. Noyes: I would term it as a fluid situation that the slope of the excavated material is going to change over the coming weeks and months. Currently, I really don't have a sense of its slope, but I would refer you to Mr. Haigh.

Mr. Rapozo: Okay, thank you.

Council Chair Furfaro: Any other questions? Council Vice Chair?

Ms. Yukimura: I just want to take this opportunity to thank you, Thomas, for your incredible work and coordinating all the volunteers to keep the park beautiful and usable. Thank you very much.

Mr. Noyes: I'd like to note that you have an opportunity to come out at 8:30 on Saturday morning, any Saturday morning.

Ms. Yukimura: I get your emails, thank you. I come when I can. I really appreciate...

Council Chair Furfaro: Never miss an opportunity. Mr. Chang, you had a question.

Mr. Chang: Yeah, thank you very much, Chair, and yes, we really want to thank the Friends of Kamalani. I see your sign out over there just as a reminder and you guys are doing a great job of cleaning up. I'll try my best to be there at 8:30 on Saturday. I'll bring my buddy Glenn Mickens with me, so he can help us clean up.

Mr. Noyes: Bring your camera man also.

Mr. Chang: We'll try. Hey, I wanted to ask you, did you ever have the chance to swim outside of the break wall.

Mr. Noyes: You know, I never have, I never have. You want to go do that some time?

Mr. Chang: Yes, because if you have a chance I had...because just to try to see where would the sand be coming from. It seems as if we've got Kona winds or something, like the Chair was saying a south, southeast swell. You see all that beach and the sand in front of the lifeguard tower that can run in, but going on the outside there's really hardly any pockets of sand to work its way either by somehow getting over or getting through, so maybe that's what we might want to try to do on Saturday.

Mr. Noyes: Sure, sounds good.

Council Chair Furfaro: Okay, Tom, you know where we're kind of at right now. We're going to give this a six-month opportunity. We're going to be writing to the department of health about water quality issues. Also we're going to write some engineering questions to Mr. Dill and then also obviously one of the options, as the young lady had testified earlier, maybe seeing if we can't do more by Makaha kind of concept for letting some more surge into the pond. You're fine with us letting this evolve itself until November.

Mr. Noyes: I think gathering data on the turbidity, bacterial counts, profile of the drop-off over the coming months, will provide a sound basis for decision making going forward.

Council Chair Furfaro: Okay, since you swam the pond, looking at five locations, center, farthest out to the ocean, closest to the interior walls, you feel that's ample?

Mr. Noyes: I would also encourage sampling in the Keiki pond.

Council Chair Furfaro: Oh yes, very good, good point. Thank you very much.

Mr. Noyes: Thank you.

Council Chair Furfaro: Thank you. Did we get a copy of your testimony?

Mr. Noyes: I handed that in.

Council Chair Furfaro: Okay, any more speakers? Mr. Lydgate?

JOHN LYDGATE: For the record, my name is John Lydgate. I'm a volunteer with Friends of Kamalani. Mr. Chair, Members of the Council, thank you so much for all your support all these years to make Lydgate Park what it is. However, we came for bread and you handed us stones. That's supposed to be a joke. All the things that you have said, our speakers today and Lucia, you're absolutely right. Everything you said is true. I was embarrassed when a young couple a couple weeks ago after the pond was dredged and the wall rebuilt, they had their mask and their snorkel, and they came down. They put their heads in the water and they shook their heads and they got out and left. And I said to them, I really apologize. Oh, you don't need to apologize. It wasn't your fault. Well, in a way it was my fault. All of us have asked and the late Mayor Baptiste particularly was concerned about the huge quantities of wood that swept into the pond and totally blocked it off, stopped it down. It was a mess and people were angry. There was no job description of any county official to clear it. So we, through a wonderful community effort of all of you and this community cleaned it up ourselves. And that's the state of the (inaudible). So I just want to thank all of you, just all the concerns are there. It is murky. You can't really snorkel. You can't really...I swam this morning. You cannot see your feet at the bottom. I thought the point, Mr. Chair, was excellent that we have the water samples tested, not just the one single place, which is fairly clear consistently, but some of the other very murky places that aren't clear. So I think all these points are very well taken. And I as Norman Hunter, I won't quote him officially, a lifeguard, rightly said, is like surgery. After you pull the stitches out it takes a while to heal. It's going to take a lot more time to heal and probably will be six months to a year. So thank you for a strategy of monitoring this and taking the next step. Thank you.

Council Chair Furfaro: Mahalo, John. Let me see if we have any questions for you. Mr. Bynum.

Mr. Bynum: John, just an estimate, how many times do you think volunteers have cleaned out that pond?

Mr. Lydgate: In the early days we went once a month. In the last couple of years, it's been every week and every Saturday. And people have been terrific. They've come, the local people and visitors. Starbucks donated the coffee. People bring food. They bring rolls, something to eat, and we always have a big party. We don't tell the fire marshal, but every once we torched some marshmallows and torched a lot of the wood and hoped it won't blow into the hotel, in which case they complain and they say, oh, it's Lydgate again, we're going to fine them this time. But somehow I eluded the fine, so far. But we try and get rid of the wood as best we can. However, I think these last storms and the wood that's on the (inaudible) of the beach on the right-hand side by the lifeguard tower, it's a mess down there. It should be clear. I had hoped the...was it Kaua'i Builders? I had hoped they'd push that down with the big D-9 and push that wood out of the way, way down, but out of sight, out of mind. But that's just a wildcard. So thank you.

Council Chair Furfaro: John, is there any long-term discussion about the driftwood and so forth? You and Friends of Kamalani, have you entered into any discussion with Lenny and the mayor on the ongoing maintenance because the council cannot direct a policy. We can set a vision, but we can't direct a policy. Have you interacted with the mayor and the parks department?

Mr. Lydgate: No, no, I haven't. Long-term, I'm 75 at the moment. I have another five years that I'll be happy to be down and volunteer. But after five years I would like to have someone with a job description from the county to take care of some of that work. And Glenn Mickens rightly said, yes, it would be great to have a big machine.

Council Chair Furfaro: I don't think you're following my question. If you want a job description, that's more than miscellaneous duties as assigned, you need to go and see the mayor and the parks department and make this stand. I obviously don't disagree with you, John. You and I have been along for a while on these issues, but we need to get into the parks department and really point out some of these needs. Glenn Mickens brought it up earlier about even the sand machine. We need to have that kind of dialogue with the parks department and the administration. And I believe Mr. Carvalho would be very open to a discussion with you.

Mr. Lydgate: Okay. I think it's a very good suggestion. We'll take it up with Friends of Kamalani meeting next Monday and I'll suggest that and take it from there.

Council Chair Furfaro: You know, John, you bring tons of testimony with your history with the park and so forth. And I do think he'll be open to that discussion. And I would be glad to join you or someone from the council when that meeting occurs.

Mr. Lydgate: Well, it's very positive and very, very encouraging, and thank you all for your incredible support. Aloha.

Council Chair Furfaro: Let me see if there are any more questions, John. No. Thank you again, John, for all you do. Is there any more testimony on this item before I close? Okay, I'm going to call the meeting order.

There being no one else wishing to testify on this matter, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: So note that we're going to ask to defer this item until the first council meeting in November. There will be a series of questions that will go out to three various departments, and I will see that that correspondence is handled within the next week. If you have any additional questions, please send it over to my office. Any further discussion, members? Mr. Chang.

Mr. Chang: Thank you, Chairman. I actually kind of jumped the gun when people asked earlier when did the signage come out and the sign for those of you out there says, Warning, Sudden drop-off, bottom drops off abruptly." So that'll just let you know how from here it goes to here. So there is a drop-off and obviously they are saying you could drown. If in doubt, don't go out. So the signage actually came out after the Memorial Day weekend and simply because of the fact that that was when they started to do their rescues. And because it's Lydgate Park and everybody knew it was a keiki-family-visitor oriented park, they had to try to locate these signs because signs like these never existed at Lydgate to readily put out there.

I ran into the state health environmental specialist doing water samples and to answer Lucia's concern about the various different parts of the pond, he assured me that the best place to get the water samples would be closer to the shore. I don't know what that rhyme or reason was, but he said if anything would be at its

highest levels, it would be the levels closest to the shore. But I do agree and Thomas Noyes had mentioned that the baby pond definitely needs testing because the baby pond basically has no, in my opinion, I think it's very stagnant and that, I think, needs to be definitely looked at. You know the Lydgate Park for the local families, local families used to flock that area and interestingly over the 4th of July weekend according to the lifeguards, because the word got out about what the state of Lydgate Park is, the beach was not crowded at all over the 4th of July weekend. And I observed a few tourists yesterday and the guidebooks and the local concierge or guest service people, we all speak highly of Lydgate Park, but it's kind of sad because they bring their picnics and they bring their dive equipment thing, but the minute they get out, within a minute or two they're out there. So that's all about public education. I would recommend, if anybody's interested in learning a little bit more about the condition or a little bit more about the pond and the communications that we send out to engineers and when we revisit this in six months, I would really like to encourage all of us to get the lifeguards involved because they're the ones that are there five days a week, eight hours a day, they know the currents, they know the tides, they know the winds, they know the directions, and probably to get the best bird's eye view of Lydgate Pond itself would be to get up on the lifeguard tower, up to the top of the tower, because you can see down and you can look in and around the area itself. I just wanted to say, but speaking to a lot of the people that know a little bit about the ocean, the currents and what have you, I think as the Chairman stated and I'm glad that he wants to revisit this in the next six months, most of the people said let's give mother nature a chance because mother nature works in mysterious ways that are far more superior than us. So I believe in time, you know we've seen a noticeable change in the first month, so hopefully we'll get a second month change. Maybe there might be a big east swell that can move its way in and work its way out. But the bottom of the bowl, if you will, where the membrane and rocks were moved out to place in and around the wall, it is a big taro field down at the bottom. It really is and that's going to take a lot of time to clean up.

So we'll all just monitor this in the past several weeks and we'll see what the engineers perhaps can come up with as far as some water flow or some movement within the pond itself. Thank you very much and I'll see you on Saturday morning. Thank you.

Council Chair Furfaro: Thank you, Mr. Chang. I think it's important for me to answer your question on rhyme and reason and getting the lifeguards involved. First, I believe rhyme and reason tells you that to get a sample from the shoreline is the easiest place to get it from. That's the answer. You want to get the lifeguards involved, get them on a board and see if they'll paddle out to these specific areas to measure the water quality. But I think that was the short-term answer. Taking it only from the shoreline is the easy way to do it. Other members or discussion?

Mr. Bynum: I'm glad we had this update today. I think really what I heard was a lot of consensus that we needed to do something about the ponds. We had problems and often they were closed because of...and the concern is really bacteria. That's what could make you ill in terms of public safety. And just because the public can't see this chart, the acceptable level of one of them is less than 35. The numbers have been less than 10, 2.3, the highest 20 since the (inaudible). Another measure needs to be less than 50 and the numbers are 1, 2, 3. So, the numbers are well below the threshold in terms of bacteria that could actually cause somebody...a public safety concern. The turbidity, though, is about the quality of the experience, which we all know is diminished and we all hope that it comes back. But I think the council has outlined, and I'm sure the administration

will proceed, about monitoring this close, asking these questions. I've talked to probably a dozen people who have different ideas about how we might mitigate and I think we need to follow up with the coastal engineers and see what their suggestions are to us, although what we heard from parks today is their suggestion right now is wait and see and monitor. And again, thanks to John and the hundreds of people, and Bruce was here today, he didn't speak, that for many years now virtually lived at Lydgate Park and been very concerned about the experience for visitors and locals alike. So thank you very much.

Council Chair Furfaro: Okay, members, I would like to get a motion. If there's...oh, you got testimony?

Mr. Rapozo: I just get, yeah, just real quick.

Council Chair Furfaro: Mr. Rapozo, go right ahead.

Mr. Rapozo: I think Mr. Bynum made a very important point that it has become, I believe, a public safety issue as far as the bacteria and I'm concerned that in fact those samples are not being taken from where the bacteria might be in levels that would be above the limits. So, obviously we'll be exploring that.

The other thing, Mr. Chair, one of the things that I'm concerned about and part of the questions or a question over to the lifeguard/fire department bureau to see what the rescue rates or if there has been an increase in rescues since the pond has been reopened. It sounds like that drop-off may be deeper than I thought and obviously, if that is causing a problem, we need to address that.

And then the other suggestion would be to send over a request to the University of Hawai'i, the Sea Grant Office. You know over the years as we've worked with Sea Grant representatives, they look for projects to examine and to inspect and to work on. They have many UH students who would be able to utilize this experience as requirements for their studies. So maybe we could send over a communication to planning and see if we could somehow get some assistance from the Sea Grant Office in further exploring. I think my bigger concern right now—well, there are several—but I think the muck on the bottom, I think that's something we have to address because it is below that surface where now it has become that muck substance or clay or whatever it may be, I'm not so sure there's going to be enough circulation to restore it. That's a question for the engineers.

And then the sea life, Mr. Noyes, in his testimony, said he observed no sea life or no marine life. And Mr. Chang's experience on Saturday or yesterday, he saw very little fish. So that is another big concern. I mean is it just that the fish aren't there? Is it because the fish are dying because of bacteria? Is it because the fish cannot get through the wall or there is no more opportunity for the fish to get into the pond? But like you said earlier, we're not engineers on this table or coastal people, so we'll never figure it out. But I think those questions need to be asked to the right people, so.

Council Chair Furfaro: And it starts with our consultants because we pay them for services.

Mr. Rapozo: Correct and I'm not sure if we have a copy of the report, but if we could, Mr. Chair, get a copy of the report so we can review it. Thank you.

Council Chair Furfaro: I have that in my notes. Okay, Council Vice Chair.

Ms. Yukimura: Yes, I think this session has been good. It's an example of community problem-solving at its best. We have this wonderful, human-made resource of Lydgate Park pond. It needed to be cleared and repaired but as John Lydgate said, there were some unintended consequences. We still don't know perfectly how to work with nature. And the remaining issues are not just public safety, but they are usability of a community place of the heart. So I think it's not just monitoring because the problems may not go away over time, based on testimony that we've heard. And I'm thankful that we're going to be following up so that there hopefully will be more sampling from more places. We will ask the experts about current and ocean flow and that the six-month period to get more expertise from our consultants and from Sea Grant as well, if we want to. But I think there is more work to be done and I'm glad that this council session has focused on that.

Council Chair Furfaro: Thank you. We are close to a caption break. I do want to say to everyone before I go any further, when we come back I am going to jump to the communication dealing with Bills No. 2386 and 2410. But more importantly, if there isn't anything more to say, I am looking for a motion to defer to the first week of November, after we send out the appropriate questions and I need that motion.

Mr. Bynum moved to defer C 2011-199 to the first council meeting in November 2011, seconded by Mr. Chang, and unanimously carried.

Council Chair Furfaro: Thank you. We're going to go on a 10-minute caption break. Thank you everyone who came for this item.

There being no objection, the meeting was recessed at 10:53 a.m.

The meeting reconvened at 11:03 a.m., and proceeded as follows:

Council Chair Furfaro: We're back from recess. Mr. Clerk, you probably heard my discussions as we go to communications, I want to take communication 2011-201. Could you please read that item?

There being no objection, communication C 2011-201 was taken out of order.

Mr. Nakamura: Council Chair, we're on page 2 of the council's agenda on communication C 2011-201.

C 2011-201 Communication (06/22/2011) from the Interim Director of Planning, transmitting for Council consideration, the Planning Commission's amendments to the Council's Proposed Draft Bill (No. 2386), relating to the permitting process for transient accommodation units.

Council Chair Furfaro: Thank you very much. I want the audience to know it is my intention to take testimony on this communication as the bill does not come up until much later during today's agenda, which will be a very full one. So the item here is we have the original proposed draft bill 2386, which went down to the planning commission with amendments from the council. After the review of those amendments and the commission having several public meetings, a new bill was sent back up to us at 2410. And so on that proposed draft bill I would hope that that bill is the one that would go on to first reading and that bill 2386 would end up

being received. Now that I've given that, may I see a show of hands in the audience who would like to testify now on the communication? Carl, you're welcome to come up. Please introduce yourself and I will give you the full six minutes.

There being no objection, the rules were suspended.

CARL IMPARATO: Thank you. Aloha, councilmembers, my name is Carl Imparato and I'm speaking today on behalf of the Coalition for Responsible Government (CRG). Since it's been about two to three years since the charter amendment that led to these bills was passed, I'd like to today provide some history that I hope will inform the council as it considers these two bills.

The coalition for responsible government is a coalition of Kaua'i community organizations and citizens that was formed in 2008 to spearhead the enactment of the County Charter amendment that requires the county of Kaua'i to give force and meaning to the Kaua'i General Plan's vision for Kaua'i's future.

CRG led all aspects from inception to passage of the 2008 campaign to enact the charter amendment that became Section 3.19 of the county charter after the public approved the measure by a 64-36 percent majority. We believe that the public's overwhelming support of the measure clearly indicates that Kaua'i's residents have a very strong desire to see the charter amendment's goal that Kaua'i grows in a way that's consistent with the development scenarios in Kaua'i general plan. The charter amendment passed by an almost 2-1 margin because residents were clearly very concerned about the many negative impacts that uncontrolled tourist development would have on Kaua'i.

The general plan envisioned at the high end of its growth scenarios, 2500 additional tourist units being built over the period from 2000 to 2020, but in just the first eight years of that period more than 4,000 additional tourist units were approved or under construction. That's more than four times the growth rate in the high-end scenario and it's more than six times the growth rate in the moderate growth scenario. That works out to 32 years worth of growth in just 8 years. I won't go into the detail about the concerns raised by this type of growth, but it's clear that that amount of growth is not manageable in the short-term, it's not sustainable in the long-term, and it's not desirable on any terms.

Now it wasn't the purpose of the charter amendment to stop growth. The purpose of the charter amendment was to give teeth to current and future general plans to make them more than meaningless documents. We believe that intelligently managing the growth of Kaua'i's tourist industry is the single most important sustainability issue for Kaua'i and that all other sustainability concerns are dwarfed by comparison. I want to make the point that even with the general plan's growth rate of 1.5 percent per year, that means the number of tourist units on Kaua'i would double over 50 years. And so when you think about sustainability over the long-term, you really see we do need to grapple with this growth question sooner rather than later.

Now as to Bills 2386 and 2410, to begin with the coalition for responsible government has no problem with the council's electing to pass its approval authority to the planning commission as long as that passage is accomplished consistent with the terms and the intent of the charter. There are two major requirements that these bills need to meet. The first is compliance with the terms and the intent of the charter. The charter is very explicit. It says that if you're going to transfer authority to the planning commission, it must be in a way that limits the rate of increase and the number of transient accommodation units in the



county to no more than 1.5 percent per annum on a multi-year average basis or such growth rate that's consistent with a future general plan. If the bills don't comply with this requirement, the bills would violate the charter. The charter amendment does not allow for exceptions for approved but not yet constructed projects or partially approved projects or partly built projects or vacant hotel sites that might in the future become projects. The average rate of increase, according to the charter, must be no greater than 1.5 percent per year and based on the actual number of transient accommodation units. So that's the very first important constraint on any bill.

The second requirement is an important external constraint. It's equitable treatment of existing projects that have spent substantial sums wending their way through the permitting process and we do not disagree that there needs to be equitable treatment of existing projects that have obtained their zoning, use or subdivision permits. However, this equitable treatment has to be achieved subject to respecting both the letter and spirit of the charter amendment. That means that it's not unreasonable to exempt certain projects from the new permitting requirements as long as the units in those projects are counted when one considers the 1.5 percent annual growth limit and that can be done.

The CRG appreciates the extensive effort that the planning department, the planning commission, and the county attorney's office have all made in proposing revisions to Bill 2386. Those revisions substantially improve the original bill. But there are still several major problems and most of them are related to first, the enormous bubble of projects that have been approved but not yet constructed, somewhere in the range of 4,000 units; and second, it's related to lots that have zoning but for which no projects have yet even been proposed, let alone permitted, there's about 2,000 to 3,000 units in those categories. Now we believe that equitable treatment for those projects in that first group means that those projects be given priority, but we have to count the number of tourist units in those projects when looking at what can be approved in the future. And I think what the problem in Bill 2410 is that it's really not clear in how it's going to address those issues of the existing resort projects and the undeveloped lots. But we believe that further discussion can work out that problem.

There are a few other concerns, but I think we can...I'm optimistic, at least, that as long as we continue the process that we've undergone with the planning department and the planning commission that we may be able to bring all of these pieces together and end up with a bill that meets, what we believe to be, the requirements of the charter amendment and the needs to give protection to vested rights, and I think all of the other concerns we've heard during the process before the planning department and planning commission.

So I will conclude with four points. The first is that we have to stress the importance of adhering to the legal requirement of the charter amendment and also the moral imperative of adhering to the will of the supermajority of the voters who passed the charter amendment. Number 2, we believe that Bill 2386 should be received for the record and 2410 should be the vehicle for further discussion. Number 3, we want to again acknowledge and appreciate the patience and the work of the planning department staff, the county attorney's office staff, and the planning commission in bringing us so far down this path. And number 4, we hope that the county council's planning committee will continue to hear our concerns, accept our input, so that the final outcome will be a bill that faithfully adheres to the charter amendment's requirements. We really feel that by working collaboratively, Bill 2410 can be amended to faithfully conform to the letter and spirit of the

charter, be legal and fair in addressing the concerns of developers whose projects are underway, and put Kaua'i on the path to long-term sustainable growth. And I thank you all for your attention and consideration.

Council Chair Furfaro: Thank you, Carl. And Carl, I just wanted to reconfirm that my earlier comments of us receiving 2386, what discussion occurred here at the council and so forth, those particular pieces were sent down to the planning commission and were incorporated through public participation in Bill 2410. So you concur this move to receive 2386?

Mr. Imperato: I think it's the right thing to do, yes.

Council Chair Furfaro: Okay, thank you very much. I also want to thank you in advance for your compliments to the planning department. It's been several years that they've been working on this, as it was initiated by the charter initiative and I just want to say thank you for those kind words to the planning department.

Mr. Imperato: Well, they're well-deserved.

Council Chair Furfaro: Questions members for Carl? Councilwoman Yukimura.

Ms. Yukimura: Hi, thank you. Do you have a copy of your written testimony? Did we receive it?

Mr. Imperato: I can give that.

Council Chair Furfaro: I'll send a staff member to take it from you, if you don't mind, Carl?

Ms. Yukimura: So my question is you said it's not unreasonable to exempt a certain development as long as they are counted in the 1.5 percent. I was not clear what you meant by that.

Mr. Imperato: Right, well, there are a number of projects that were approved and have many or all of their permits, projects typically approved between 2000 and 2008 in that batch of 4,000 units. So I think there's a reasonable, legal argument that could be made that those projects have some vested rights and now cannot be told that they cannot build. The way that that can be handled would be to basically say, if we allow these projects to continue to go forward on their path, they don't have to go through a new set of hoops. They've already got their permits. They can be built. But when we look at what can be approved over the next 20 years to meet the 1.5 percent growth requirement, 1.5 percent growth requirement comes out to about 160 units per year. So over 20 years that would be about 3200 units, okay. Of these 4,000 units that have already been approved, 1,000 have been constructed, that leaves about 3,000. Of that 3,000 there's probably some that are going to fold by the wayside. Say it comes down to 2,000 units. Those 2,000 units can be subtracted as basically a pre-existing debt against the 3200 units that the county can approve in the future. So it's basically we pay off the debt, this glut of units that was already approved and has been given some vested rights, that 2,000 units by subtracting that from what can be approved in the future, and I'm just throwing numbers out here. But if 3200 units could be approved over the next 20 years and there are 2,000 that are already sort of committed, that means you would have the ability as the county to approve only 1200 more units over the next few years and that would still comply with the charter amendment's requirement for a 1.5 percent growth rate on a multi-year

average basis. So that's what I'm saying is we don't have to gore the oxen of the people who have acted in good faith with their projects, but we can still ensure that when we look out over a 20-year horizon that we've complied with the 1.5 percent growth rate.

Ms. Yukimura: So you are envisioning a build out of more than 1.5 percent for those that are possibly...if they're already approved?

Mr. Imparato: No. What might happen is that over the first few years, the build out might be effectively greater than 1.5 percent. It might be 2-3 percent, but in the next years then only 0.5% would be allowed, so that on a multi-year average basis it all comes out right.

Ms. Yukimura: And what is your time span on this?

Mr. Imparato: That's something that the county can decide as part of its development of the bill. To me it makes sense to look at this on a 20- to 30-year horizon because the general plan basically operates on a 20- to 30-year horizon.

Ms. Yukimura: And what if there's a new general plan?

Mr. Imparato: Well, that's always the risk. The way the charter amendment was written was not to basically say that there shall be an annual limit. What the charter amendment said is that the growth that the county approves has to be consistent with the present or the future general plan. So if a future general plan happens to say that for whatever reason the county's policy and given the input of the citizens is that there should be 0.5 percent growth rate, then less would have to be approved in the future.

On the other hand, if the county's new general plan says 3 percent growth rate, 4 percent growth rate, then so be it. The charter amendment did not try to state in perpetuity what kind of limit there should be on the county's ability to approve development. All it basically said is whatever we come together on and agree on in the general plan should have some force of law.

Ms. Yukimura: So what is your concept of what the general plan agreed on in terms of gross number of resort units by 2020?

Mr. Imparato: The 2000 general plan, which did not have any binding number, it had scenarios in it. It had two growth scenarios: a high-growth scenario and an average-growth or medium-growth scenario. The high-growth scenario, which is the one that basically we were looking at when we developed the charter amendment corresponded to 2500, excuse me, 2500 more units between the year 2000 and 2020, an average of 125 units per year. That's what the high-growth scenario corresponded to.

Ms. Yukimura: And what base were we assuming? 2500 added to what?

Mr. Imparato: You know, the number, I don't have it at the tip of my tongue, but it's somewhere between 7,000...I think it was 7200 units, somewhere between 7,000 and 8,000 units. In 2005 there were a little over 8,000 units on Kaua'i. So in the year 2000, the number was probably closer to 7,000. I've got that number somewhere, but it's not on the tip of my tongue.

Ms. Yukimura: So you're looking at 10,000 units or 9,700 units by 2020?

Mr. Imparato: Well, that's what the original general plan, the 2000 general plan said.

Ms. Yukimura: The high growth rate?

Mr. Imparato: Correct.

Ms. Yukimura: And do we know what traffic and what marketing, what occupancies, what any of that would create? I mean is that really what we want to aim for?

Mr. Imparato: That's a good question. I'll say that the way you come up with the number of 2500 units per duration of the general plan is to assume an occupancy rate. And the occupancy rate that we used was, I believe, 75 percent, which was below the most optimistic occupancy rate in the general plan which is on the order of 80 percent, and higher than the existing occupancy rate at the time the general plan came about.

Ms. Yukimura: Well and in this time, economic time, what kind of occupancy rates are we looking at?

Mr. Imparato: I'm sure they're lower right now. But I guess the question is when you think about this over the long haul, it's probably unrealistic to ever assume an occupancy rate just because of turnover and a number of other things greater than 85% and it's somewhat unrealistic, I think, to think that occupancy rates will be down at the 60% over the long haul because developers probably won't invest their money and build a lot of hotels and resort projects if occupancy rates appear to be that low. It's a bad investment.

Ms. Yukimura: Oh, they always think their occupancy rates are going to be better than others.

Mr. Imparato: Well, that's why occupancy rates get down to 60, but I doubt they'll get down to 50 or 40, but again I'm not (inaudible).

Council Chair Furfaro: You know there's a lot of speculation in your comments, Carl. You can look up the numbers at the Hawai'i Visitors Bureau. The island is running 61.8 percent occupancy. The average rate is \$14 better than the previous year because of the high quality inventory that we have.

But I would think when we get to August 3rd's public hearing, it would be good, rather than give us your numbers, it would be good to look up those actual particulars.

Mr. Imparato: Will do. And I'd like to say also, though, that the bill, the charter amendment or all of these things don't force a particular number.

Council Chair Furfaro: And I'm just saying that I'm allowing testimony at this point for the purpose of convenience for many people that have other meetings to attend to on this very important subject, but we're still even getting to an August 3rd public hearing before this even goes into committee, so. Councilwoman, you still have the floor, but I just didn't want us to be speculating with occupancy numbers when the facts are available.

Ms. Yukimura: Thank you. I have one more question. So this 1.5 percent is based, I presume, on a stable base and not an increasing basis?

Mr. Imparato: No, the 1.5 percent corresponds to taking the tourist accommodations that were in place when the general plan was passed, 1999-2000, that base, and applying the general plan's projected increase in average daily visitor count. So the general plan had an average daily visitor count for its high growth scenario. One translates that average daily visitor count to a number of tourist units that are needed on the island, assuming a certain occupancy rate. And that's where one comes up with a number of units, 2500 over the 20-year period. And once one says 2500 units, then it's just a math problem to convert that to an average annual growth rate, which is about 1.5 percent.

Ms. Yukimura: And Bill 2410 is using that 2500?

Mr. Imparato: I don't believe so.

Ms. Yukimura: What base is it using then?

Mr. Imparato: It's using the 1.5 percent growth rate...

Ms. Yukimura: Yeah, but what is the base?

Mr. Imparato: The base that is used in the bill, I believe, is 9200 or so units that are in existence, I believe, as of 2010, I believe, was the year. Excuse me?

Mr. Kuali'i: 2008.

Mr. Imparato: 2008, okay.

Council Chair Furfaro: Yeah, 9200 in the year 2008 and not referencing your number going back to the general plan. The bill that came back to us as Councilman Kuali'i pointed out is a 2008 number and a summary inventory of about 9200 units.

Ms. Yukimura: And how long does this 1.5 percent apply?

Mr. Imparato: Well, in the bill, as written, it would apply until the bill is changed. The bill doesn't have language that says this growth rate applies until there is a new general plan. It basically establishes that as the growth rate and then I assume that if you leave the bill in that form, then with a new general plan and a different growth rate, implicit or explicit, that at that point you might want to amend the bill. But at this point, the bill just basically assumes that fixed n...it hard wires that number in there.

Ms. Yukimura: So I'm trying to figure out what our end in mind is and I can't see it. I don't know what it is. So many units, visitor units by a certain year or do we just keep adding 1.5 percent?

Mr. Imparato: I think that maybe as the chair has said, what I should do is to help out on this is maybe during the public hearing I will bring a graph which basically maybe can illustrate that a little bit better.

Ms. Yukimura: That would be helpful. Thank you very much.

Council Chair Furfaro: Anyone else would like to pose any questions to Mr. Imparato at this time? If not, Carl, I just personally want to thank you for all your work and staying close to the planning department, but this is the first step and we will be later in the afternoon I will be announcing a date that I got from our clerk's office of August 3rd for the first public hearing, then referring it to the committee under Councilwoman Nakamura.

Mr. Imparato: Thank you.

Council Chair Furfaro: Thank you very much, Carl. Is there anybody else in the audience who would like to testify on this bill at this time? If not, this is only the communication. The actual action will happen later. Members, I'm going to call the council back to order.

There being no one else wishing to testify on this matter, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: Is there any short comments?

Ms. Nakamura moved to receive C 2011-201 for the record, seconded by Mr. Rapozo, and unanimously carried.

Council Chair Furfaro: Thank you very much. As some of you might depart, just a reminder, tentatively August 3rd for this to appear in public hearing forum. Mr. Clerk, can we go to the the next item? I'm going to let the auditor's department know that I've decided to go to the police chief's agenda item today. Chief, is that fine with you? Okay. Can I have the clerk then read that item?

Mr. Nakamura: Council Chair, we're on page 2 of the council's agenda on communication C 2011-200.

C 2011-200 Communication (06/09/2011) from Councilmember Chang, requesting the following:

- (1) Agenda time for the Chief of Police to provide the Council with an update on Ordinance No. 892 (relating to mobile electronic devices) since its implementation nearly a year ago, to include an overall assessment of the effectiveness of the program, the number of citations issued, and community and visitor educational efforts.
- (2) The presence of Ray McCormick, District Engineer, State Department of Transportation, Highways Division, to comment on the possible use of signage along State highways for public and visitor educational purposes as it relates to Ordinance No. 892.

Council Chair Furfaro: Thank you. Chief, I'm going to suspend the rules and I'm going to let the members know since this was a communiqué from Mr. Chang, I'll give him the floor first. But if you could give us your presentation, introduce yourself, the rules are now suspended.

There being no objection, the rules were suspended.

DARRYL PERRY, Kaua'i Police Chief: Aloha, Police Chief Darryl Perry for the Kaua'i Police Department. Actually the person that was going to give the presentation became ill, so that was Sergeant Rob Gausepohl, acting lieutenant. I figure the chief and the lieutenant here can put our heads together and it might be equal to what Rob can do. So we'll give it a shot.

This is in regards to Ordinance 892 for the county of Kaua'i and what we'll do is we'll give you a brief history about the impact of distracted drivers on federal statistics. We'll talk a little bit about the cost and we'll also talk about the enactment of the law, the educational process that we went through to inform our public, and finally we'll talk about the statistics and the challenges that we're currently facing. So I'll turn it over to Lieutenant Mark Scribner.

Council Chair Furfaro: Excuse me, Lt. Mark, could I just let a moment for the members to get comfortable? Is everybody...did you want a chair, Mel?

Mr. Rapozo: Oh no, I'm fine.

Council Chair Furfaro: You're fine? Okay.

Mr. Rapozo: It's just my head gets in the way.

Council Chair Furfaro: Okay, Lieutenant Scribner, you have the floor, go ahead.

MARK SCRIBNER, Lieutenant, KPD: Good morning, Council, Councilmembers, Council Chair. We put together a PowerPoint presentation really quickly for you all and this is on Ordinance 892, which is the use of mobile electronic devices while operating a motor vehicle, which is kind of a mouthful to say. (Inaudible) the cell phone law.

Council Chair Furfaro: He needs the clicker.

Lt. Scribner: Just like the chief said, we'll go through some statistics. Federal researchers have observed drivers of all ages using a variety of handheld devices while driving, cell phones, iPods, videogames, Blackberry's, GPS systems and many other electronic devices with today's technology. In particular cell phones used for talking and texting are more prevalent in our nation's roadways today, especially texting. We see it a lot today on these roadways and now since the law is in effect, we've noticed more of the people being more distracted because they are trying to hide their cell phones and their texting devices so we couldn't observe them. So we're trying to think of innovative ways to catch those people doing that. 2008 distracted driving crashes, this is from NHTSA, the national highway traffic safety administration, it shows 6,000 people died on our nation's roadways as a result or a contributing factor being distracted driving or cell phones. 500,000 people were injured.

Every day more than 800,000 vehicles are driven by someone using a handheld cell phone and that's nationwide. This is 2008 numbers. So it's probably even more now. This Harvard Center of Risk Analysis reports that cell phone use contributes to an estimated 6 percent of all crashes. That equals 636,000 crashes, 330,000 injuries, 12,000 serious injuries, 2600 deaths each year at an annual cost of \$43 billion, which is kind of astounding for just one modern technological device.

Kaua'i County, the use of mobile electronic devices while operating a vehicle, this is the ordinance. This is just a brief history. On November 4, 2009 Councilmember Kawakami introduced the bill and it was modeled after Honolulu's ordinance. On February 17, 2010 all of you unanimously adopted the bill. On February 18, 2010 the mayor approved the bill and then it became law on the 23rd. In comparing with the laws on the mainland, our ordinance is more enforceable and less vague thanks to the work of the county council and county attorney Justin Kollar. Each one of the counties have a cell phone ordinance or a mobile electronic device ordinance and we looked at Honolulu's as well as the other counties and ours is a little bit more descriptive as far as Honolulu was having a problem with the push-to-talk Nextel type phones. So ours kind of explains what a two-way radio is in more detail so that it's easier for us to enforce.

And before the ordinance was passed, the Kaua'i police department made an effort to advise the community, as well as the visitors. We did a lot of public service announcements on all the radio stations. We did articles in the newspaper and we went as far as creating and delivering fliers to all of the rent-a-car agencies so that they could give them out to the tourists as they rent their vehicles. We just made another batch and distributed them again just as continuing awareness for the visitors. I know a lot of states have laws, but when you stop a tourist, they always have the excuse that they didn't know. So if the rent-a-car agencies would be more prevalent in giving these fliers out, it would help out a lot.

Once our ordinance was passed, the educational efforts continued. Like I said we have continued to give out these fliers. We still have PSAs and we update our PSAs every six months with the the radio stations. And we are fully aware that even the best laws may be ignored if they are not enforced, so we're continuing enforcement.

With the Kaua'i county council's approval, the Kaua'i Police Department applied for and obtained a state DOT Grant, which is a federal grant that's passed down to the states and they distribute the money to us. This grant allows us to do enforcement on distracted driving and mobile electronic devices, and NHTSA has just made it aware that that one of their priorities is distracted driving. So, they're putting more money into this effort.

Kaua'i Police Department Enforcement. And since the bill was passed, this is the amount of citations that were issued in 2010. The bill was passed in May which we did a little bit of enforcement and a lot more education. And through 2010, we did enforcement which was not very much. We did a lot of education and stopping people and advising them that it was against the law, rather than giving them citations. A lot of warnings were given. This is the breakdown by district for 2010. As you can see, Kawaihau and Līhu'e districts were very high compared to the other districts. I think that's just because of the population and the amount of people that live and work in these two districts.

In 2011, we started doing more enforcement and less warnings, so the citations continued to go up. And also that's about the time we got our federal/state grant to do the enforcement on overtime. Again broken down by district, again Līhu'e and Kawaihau districts, the majority of the population in those districts, so the amount of citations will be greater.

And the Kaua'i Police Department's education and enforcement efforts will continue, and every year we'll be applying for that grant, so that we can (inaudible) and do some enforcement, as well as continue the PSAs, the educational component for the cell phone ordinance or mobile electronic device enforcement. We'll also be



creating more fliers and distributing them to the rent-a-car agencies. And I believe they want to do some signage. So that's not our ballpark, but state. And that's all that I have. Any questions as far as our enforcement efforts or educational efforts?

Council Chair Furfaro: Mr. Chang, as I mentioned, since this was your communiqué, I will give you the floor, first.

Mr. Chang: Thank you, Chairman. Officer Scribner and Chief Perry, thank you both for being here. I just wanted to start off by saying first of all this kind of came to my attention and that was in regards to the visitors and the visitor industry. I noticed one of your pie charts here at the end, the citations in 2010, there were 76 in the Kōloa area and I noticed that there was a big jump in 2011 to 163. So I would imagine that Kōloa area, and maybe that big jump, would it be safe to say that maybe a big part of that majority might have been visitors? Do we have a breakdown with the local?

Lt. Scribner: No, we don't breakdown visitor or local as far as citations. When we do our graphs and charts, it's just in districts or in beat assignments.

Chief Perry: I just wanted to mention something for the statistics in 2010 from May to December (and this was the educational component) we issued 396, that was for eight months and for 2011 from January to May, which is only five months, we went into the enforcement phase, 535. So in each district, the number of citations went up, increased. On average for 2010 we had 50 citations per month and that increased to 107 citations per month in 2011 in the five-month period. So we increased about 57 citations per month in 2011 as compared to 2010. And you look at Kōloa, it may be an indicator that we have cited more visitors but we don't have the statistics for that. Or it just may be that we increased our enforcement efforts and those were the areas that were in violation more. There were more violations that were observed.

Mr. Chang: So in regards to the citations, are there staged areas or just by passing through? How does that enforcement work?

Lt. Scribner: Most of the enforcement is done by our beat officers just on the beat, patrolling their beat, observing the violations and giving citations. We occasionally do sting operations where we go out specifically for cell phone, seat belts and speeding citations, and we go into different areas where we know that the violations occur, such as Līhu'e and the business areas where a lot of people are in a rush, on their phones, trying to make appointments or whatever. So we kind of go to those particular areas and no, we do not target the tourists.

Mr. Chang: No, I wasn't saying that we're targeting the tourists because we all obviously support the law. That statistic just stood out.

Chief Perry: You know I went to the Distracted.gov, which is part of the US Department of Transportation and recently found that out of all the states, there are actually only about seven, the state itself, doesn't have a ban on cell phones and that includes Montana, Hawai'i, Ohio, Pennsylvania, South Dakota, and Florida. I asked why Hawai'i? Because the state has not made a law that prohibits cell phone usage, but each county has. So within those states, they may also have, except for Florida, each county has their ban on cell phones. So when we discussed the issue about visitors not knowing, it would be very rare that they did not know about a cell phone ban in Hawai'i. But that may be the case.

I also looked at perhaps foreign visitors, whether or not they would know about cell phone bans. And what I found by looking at cellular news for the major countries such as Australia, Canada, China, France, Hong Kong, Italy, Japan, Philippines, Portugal, Russia, Singapore, to mention a few, Spain, Switzerland and the UK, all of them have some component of a cell phone ban.

And so it's very difficult for us not believe but to understand why an individual, whether he or she comes from another state or from another country, not to have knowledge that there are some kind of restriction on using cell phones or instruments that would distract your driving. It's just my two cents.

Mr. Chang: Thank you, a question for Lt. Scribner. So you recently passed out some more reminder brochures to the rent-a-car companies?

Lt. Scribner: Yes, we created a small, I believe, it's a 3 x 5 little pamphlet or (inaudible) pieces of paper where it explains the law, saying that it is against the law to talk on your cell phone or use a mobile electronic device. It's a really shortened version of the law itself and we distribute them to the rent-a-car agencies. And I believe they have them on their desks or on their counters. We did also do 8 x 11 or 8.5 x 11 little posters that they could post in their businesses. So we distributed that when the law came into effect, but we just recently distributed more of those little handout sheets.

Mr. Chang: I saw that yesterday at some of the rent-a-car companies, thank you. Chairman, thank you.

Council Chair Furfaro: Thank you. Any more questions on the chiefs presentation and Lt. Scriber? Go right ahead.

Ms. Yukimura: Thank you, chief, Lt. Scribner. Before I begin, congratulations on the recent acknowledgment of your outstanding work, lieutenant. Do we have any statistics of accidents due to cell phone use?

Lt. Scribner: Accidents here? The problem with reporting accidents as far as reporting cell phone or distracted driving is most of the minor accidents or not serious accidents, they are self-reported. When the officer gets to the scene, they'll ask them, were you on your cell phone or talking on your cell phone, and more than likely they will say, no, I wasn't or it's the same as if you were using your seatbelt or not. It's kind of hard to really determine. We have one fatal crash, I believe, last year or the year before, where she was actually texting on the phone. She got into a crash and passed away. So we only have one. In that type of crash, we do the research and find out, but as far as minor or not serious crashes, like I said, it's self-reported, so it's really hard to get statistics.

Ms. Yukimura: Well, publicity about that one fatal crash certainly might be a deterrent because what it shows is that your life is at-risk when you do that.

Lt. Scribner: Definitely.

Ms. Yukimura: Yeah. I was going to ask whether it would be difficult to do a breakdown of visitors versus residents in terms of citations, though that doesn't necessarily tell you that visitors are using it more or residents are violating it more. It might be a variable of enforcement. So is there any way to get

statistics that show use versus citations? I mean because there are a lot of variables in terms of citations. I guess I'm asking is there another way to determine the prevalence of use?

Lt. Scribner: I wouldn't know of any.

Ms. Yukimura: Probably not for police.

Lt. Scribner: There are so many different cell providers and it's so wide, as far as the amount of people that I wouldn't know how to get those statistics unless you do a survey.

Ms. Yukimura: Yeah, it would almost have to be a research project, I guess, because even on those little accidents, you probably could track down, I'm not sure, maybe there are privacy problems, but track down time of use and correlate it with time of accident.

Lt. Scribner: I know when Carl came from the University of Hawai'i does his click it or ticket or the seatbelt study, there is a component of cell phone use and I don't think it breaks it down to visitor or resident, but it does have a component of cell phone use in there, so we might be able to look at that and just to find out some statistics.

Ms. Yukimura: Well, I mean I'm only asking because it might be useful to know whether it is a lack of information or just defiance of the law. But as the chief pointed out, visitors should know given the prevalence of these laws. Okay, well, thank you very much for your report.

Chief Perry: Can I mention something. From personal observation, as you all know that I ride my bike every once in a while and the general public doesn't expect to see a police chief riding their bike, so they'll let their hair down and they're just cruising. But throughout the months since this law has been implemented, I've seen, like you have, so many violators that it's unbelievable that they don't know that this law is in effect. I mean it ranges from a person driving a 1968 Toyota to somebody driving a Lexus, from being elderly like myself to very young. You run the gamut. So it's a matter of choice, it's a matter of whether or not at that particular time their need exceeds the requirements of the law. So we'll continue in our efforts and hopefully during that time period we won't have any crashes attributed to distracted drivers.

Ms. Yukimura: May I ask one more follow-up?

Council Chair Furfaro: Go right ahead.

Ms. Yukimura: Thank you, Chief. The law, excuse my ignorance here, does allow for these ear phones, right, for people to use a cell phone if they have ear phones.

Lt. Scribner: Yes, it does allow for Bluetooths as long as they don't have the phone in their hand.

Ms. Yukimura: Right, so the prohibition is against hand-held basically. So actually people can arrange to use their cell phone as long as they stop when they dial, and then they can use it when they're talking.

Lt. Scribner: As long as they have a Bluetooth hands-free device, they can use it. But like you said, if they're going to dial or have their phone in their hand, they have to pull to the side.

Ms. Yukimura: Okay. So that is an option for people, but it's for people with means to purchase the Bluetooth devices, yeah.

Chief Perry: And certainly that doesn't solve the problem in terms of distracted drivers. For example, last week there was an individual that ran two red lights, one after the other. And when that person was finally stopped and was questioned about...because I was right behind him and asked why and asked him, were you on your cell phone? He said, no. I said, well, were you on your Bluetooth. He said, I don't remember. What you mean you don't remember, it just happened. Well, yes, I was. So you know, whether or not...the issue is distracted drivers. Hand-held devices makes it even more dangerous than having a Bluetooth. But this ordinance doesn't solve the problem of distracted drivers. It just helps us to make the roads just a little bit more safe.

Ms. Yukimura: Reduce the risk. So actually if we wanted to eliminate the distraction part, we would just ban cell phone use while driving, although the enforcement of that would be even more difficult. But, in fact, what you're saying is the Bluetooth doesn't solve the problem because the cell phone use still distracts the driver.

Chief Perry: That's correct because...and I'm not a scientist by any stretch of the imagination, but it's impossible for us to multi-task. It really is. If you do the research and you read what it has to say, multi-tasking has big issues on you doing something 100% correctly. You maybe do it at 70%, 30%, but you cannot be focused on one thing 100% if you multi-task.

Ms. Yukimura: Well, a lot of mothers will tell you they have to do it. But thank you, Chief.

Council Chair Furfaro: And I'd like to thank Mr. Bynum for yielding that extra time to you. Mr. Bynum, you have the floor.

Mr. Bynum: I just want to go over a couple nuances. (Inaudible) a good law. It made me aware how easily it is to be distracted when you're driving and it's caused behavioral change and so I wanted to...some citizens have told me things that I don't think are correct, so I want to make sure. It's a good time. And this probably has been in a letter to the newspaper that if people receive a phone call and pull over on the side of the road and answer the call, are they violating some law?

Lt. Scribner: Yes, well, the way the law is written, it's your actual physical control of a motor vehicle and if the car is still running and you're behind the driver's seat, you are in actual physical control of that motor vehicle. So by the letter of the law, they are still breaking the law.

Mr. Bynum: So thanks for clearing that up. I know my behavioral change, I don't like those Bluetooth things, I don't want to be distracted. Oh, the phone's ringing. I gotta get my thing in, right? So my behavioral change is I use a wired...with one ear piece and when I get in the car I put that in my pocket and I hook it up and I drive. If the phone rings, I touch it and it answers the phone.

I rarely make calls, but I can touch it and say "call home," and never put a device in my hand. That's the key, right? Don't put a device in your hand. If it rings and you say, who's calling, you broke the law, correct?

Lt. Scribner: Correct.

Mr. Bynum: If it rings and you just touch this piece and you answer the phone, you're not breaking the law, correct.

Lt. Scribner: Correct.

Mr. Bynum: Okay and then I can't ever let you guys come here without making a comment. I hear this all of the time. Oh, the police are writing these tickets just to fix the bottom line to get money for the county. I know that your motivation is public safety and so for the record, the county gets no money from citations, right?

Lt. Scribner: That's correct. All the funds go to the judiciary system and go to the general fund for the state.

Mr. Bynum: Right. The counties have been trying to change that forever, but it never has changed and I don't see it forthcoming. So for the public, there's no economic incentive to writing tickets. It's a public safety concern that I know you have. Thank you.

Council Chair Furfaro: Councilmember Kualii.

Mr. Kualii: Aloha and mahalo, just a quick question. So when I was looking at the numbers I was wondering if in the first year of 2010, did you keep a record of the warnings that you gave out because you're saying the citations in the first year was lower because you started with education and if you stopped someone, you gave them warnings.

Lt. Scribner: No, most of the warnings were verbal warnings, but I did go out with the traffic safety unit and we did do an educational blitz where we did go over (inaudible), we stopped people and gave warnings. So that was just...

Mr. Kualii: Just looking at the graph and stuff, it would have been interesting to see the numbers of the warnings that was given every month too. And the only other thing I would say maybe going forward for the next time we look at this, it would be good to see the same months, how they line up. In 2010 you looked at five different months, which had a total of 535. In 2011 it was a 107 average per month and then in 2010, you looked at eight months, so. And it was different months. The only month that was the same was May, May of 2010 was 24 and May of 2011 was 119. So you can see the huge increase.

Lt. Scribner: Yeah because we just took from when the law was passed to present.

Mr. Kualii: Yeah, all right, it would be interesting next time to see.

Council Chair Furfaro: Thank you. Any further questions?  
Councilmember Nakamura.

Ms. Nakamura: Thank you for the presentation. I just have one quick question. What is the fine for a citation?

Mr. Chang: I think it's \$97.

Mr. Rapozo: It just went up.

Mr. Chang: \$97, but if you're in the school or construction district it's \$147.

Lt. Scribner: \$147, yes.

Mr. Chang: It just went up in Honolulu, I believe, not on...

Ms. Nakamura: Okay, thank you very much.

Mr. Rapozo: It should be the same statewide. I believe it just went up, right?

Chief Perry: On O'ahu it went up \$50.

Mr. Rapozo: Only on O'ahu?

Lt. Scribner: Because it's a county ordinance.

Chief Perry: County ordinance, not the state, okay.

Council Chair Furfaro: And Mr. Chang, I hope you delivered those answers not from personal testimony.

Mr. Chang: Oh, absolutely not.

Council Chair Furfaro: Okay, thank you.

Mr. Chang: Thank you.

Council Chair Furfaro: Councilmember Kualii.

Mr. Kualii: Chief, I thought it was very important too that you shared that information from distracted.gov and from the cellular news because I think that it's interesting to know that our tourists, where they come from they have these laws. So it's somewhat universal. I think in most of the states and in now you listed off all those countries as well. So I mean we know. Thank you.

Council Chair Furfaro: Any other questions for the Chief and the Lieutenant? Chief, I'll give you the floor. Go ahead.

Chief Perry: Just one more thing. On July 1st and this has to do with traffic safety in regards to bicyclists. You know riding my bike up here by Menehune Fish Pond, there were these two young men that came up to me. One was Eli and the other is Jacob. Eli is a young man in his 20s. He was riding a mountain bike and the other individual was Jacob. He's about nine years old and he was riding a BMX bicycle up Menehune Fish Pond, which is pretty tough for a little guy. But one thing I noticed and I talked to them about it is that both of them

were not wearing helmets. So in terms of traffic safety and stuff like that I just want to remind our public, especially the cyclists, make sure you wear a helmet. Again, Jacob and Eli, I wanted to mention that.

Council Chair Furfaro: Thank you very much. Mr. Chang, is there a second portion of this that we're going to have people from the airport division?

Mr. Chang: Yes, sir, we have Mr. McCormick going to speak on another topic regarding the cell phone.

Council Chair Furfaro: Yes, but on another topic?

Mr. Chang: Correct.

Council Chair Furfaro: Okay, Chief and Lieutenant, thank you very much and we're going to go to the second part of this communication now. Thank you. Sir, come right up.

RAY McCORMICK, Hawai'i Department of Transportation, Highways Division: Good morning, for the record Ray McCormick, Hawai'i Department of Transportation, Highways Division, not harbors or airports or anything like that, but highways. And I am the district engineer for Kaua'i.

Council Chair Furfaro: Before we go further and I'll turn the floor over to Mr. Chang, Ray, I just want to thank you for the work that you're doing in the state highway division. Your efforts and your focus within our own public works and roads division is very much appreciated. I just wanted to share that with you. Mr. Chang, I'll give you the floor.

Mr. Chang: Thank you, Chairman, and I'd like to echo that and just to let you know how efficient he has been, prior to me even having an opportunity to give him a call about the agenda item, he was already on top of it. Mr. McCormick, as I was explaining to you, it came up to my attention and it's good education for the both the locals and the visitors alike, but many people were saying that as their friends departed the Līhu'e Airport, there was no signage whatsoever as far as, like the ghost-busters cell phone with the slash over it and what have you. It was very interesting because as you were doing your research to figure out how we can get a sign, you kind of noticed there is no sign available in any of our counties throughout Hawai'i. Is that true?

Mr. McCormick: That's correct. When we received your letter, we contacted our state traffic engineer, Alvin Takeshita out of Honolulu and Alvin is our primary on anything safety related on the highways, signs, your speed limits, things like that. I talked to Alvin about the signage and told him that we might be interested in doing signs on Kaua'i. He thought that was good. So I asked him for samples from other counties. He said he had none, but we're willing to work on one for Kaua'i and maybe use it statewide. It would be probably a blue background sign, informational only. Put it out near the airport, maybe by the harbor, put a few around on the state highways. In the short-term, if we wanted to do something just to target some folks coming into town, we might want to set up some of the variable message signs and put the message on there. Those can be pulled into place and mobilized fairly quickly. I have about six of those on-island right now.

Mr. Chang: Thank you, Chair.

Council Chair Furfaro: Mr. Bynum?

Mr. Bynum: Yeah, because others that I'm going to just say on a range of issues you've been outstanding and the 40 mile an hour thing is working great and your partnership with our KPD and the county is just like what being in a small town is all about. Thank you.

Mr. McCormick: Thank you (inaudible).

Council Chair Furfaro: Mr. Kualii.

Mr. Kualii: Aloha and mahalo, I just heard you say something...you said variable message signs and about six of them on the island.

Mr. McCormick: Yes.

Mr. Kualii: Can you say something further about that. I'm not sure what you're talking about.

Mr. McCormick: Those are the electronic signs you see with the messages that change. Typically you'll see them around our construction...

Mr. Kualii: So like the like the portable ones?

Mr. McCormick: Well it's our portables, yes. The police department has some and we have a bunch and then contractors on-island have them as well.

Mr. Kualii: And so they're temporary.

Mr. McCormick: They're temporary, yes.

Mr. Kualii: They move around.

Mr. McCormick: We move them.

Mr. Kualii: So the other thing you said was when you got the letter you contacted the department of transportation and that you're seeing this possibility of where the signs might go as being at the airport and the harbor? Is that what you said? Mainly for visitors coming in?

Mr. McCormick: Yeah, we were targeting that audience as they come in from the airport and maybe from the harbor side.

Mr. Kualii: Okay, thank you.

Council Chair Furfaro: Thank you. Any additional questions for Mr. McCormick? No? Do we just communicate Mr. Chang's concern to you that we would be supportive of using the temporary road signage for alerting visitors that cell phone usage is enforced on Kauai. How do we communicate that to you?

Mr. McCormick: Well, you really just sent me a letter. So if that's what the county wants to do and the council, we'll be glad to help.

Council Chair Furfaro: Okay, I'll leave that in Mr. Chang's area. Any further questions? If not, once again, thank you very much and thank you for being here with the police department, Ray.



Mr. McCormick: Thank you, thank you for inviting me.

Ms. Nakamura: Move to receive?

Council Chair Furfaro: No, I've got community testimony. Ken, come up, and Glenn.

KEN TAYLOR: Chairman, Members of the Council, my name is Ken Taylor. First of all, I'd like to thank the chief and his staff for the presentation today and Ray's comments about signage.

Several years ago, when this law was going into effect, I had suggested that we get some of these temporary signs up, like we have all over the island or scattered around the island talking about buckle up. If I don't buckle up and have an accident, I am going to have the problem, most likely not the other person. Where with cell phone activities, I have more of an opportunity to hurt you or somebody else, maybe even myself. But I still see a lot of people out there, driving, talking on their cell phones, and all you have to do is walk down the street and be observant as to what the traffic patterns and what's going on or stand out on the corner for a little while. It's unbelievable what is going on. I certainly hope that this will continue to put a damper to this, but I really believe that we have to be serious about educating the people and letting them know. I have seen the police department jumping out from between cars at stop lights in Kapa'a and pulling people over that weren't buckled up. Things like this send a message out to the community very quickly that it is a problem. And so I really think it's important that we get some of these...have some made, these 4 x 5 banner signs that can be put up around the community. I hate the amount of signs we've got up now, but I think this is a very serious problem and I think it's something that we really have to get serious about putting a stop to and I know we'll never stop it all, but we have to send the message strong and clear and we haven't done that yet, in my observation of the traffic moving down the roadway. Thank you.

Council Chair Furfaro: Thank you, any questions for Ken? If not, Ken, you could also give suggestive testimony to the police commission on some of the suggestions you just shared with us because it's a joint effort with the state, so.

Mr. Taylor: Thank you.

Council Chair Furfaro: Mr. Mickens.

GLENN MICKENS: Thank you, Jay, for the record Glenn Mickens. I, too, want to thank the chief and his lieutenant for their fine presentation and for Dickie's suggestion, which I think is an excellent suggestion, to put more signage out there about these cell phones. And I really want to thank Ray McCormick. He's probably the most available person I've ever seen on this island that's available to the public for any concerns that you have. I think he is doing a great job and we need more people like Ray.

The chief suggested about the enforcement thing. Of course, I think enforcement comes down to one thing, more police. He has said he needs 19 positions filled and the only way that you're going to get enforcement is to have more people out there, more police out there to actually see the violations and stuff. He's talking about when he's riding his bike he sees it and as Ken pointed out, the same thing, you see people (inaudible). It's really a commonsense thing. To be on a cell phone, dialing something, trying to drive, it's a commonsense thing to say you're

going to have an accident. But I suppose so is drinking and driving, a commonsense thing saying no, but people do it and you're going to have to have the enforcement mechanism.

Anyway, again, I just wanted to thank the chief and particularly Ray for what they're doing. Thank you.

Council Chair Furfaro: Thank you for those acknowledgments.

Mr. Mickens: Thank you.

Council Chair Furfaro: Okay, members. This item is...oh, I'm sorry, Mr. Rosa.

JOE ROSA: Members of the Council, for the record Joe Rosa. Within the past couple months, it has been brought to my attention by visitors and by some local people about where is our police station located. There are no signs whatsoever. I know I go to places like on Maui or Hilo, there are signs on the highway that says police, like they have the hospital, directionals like that there. I think there should be one at the airport, one on Rice Street to signify with an arrow police station, and right near the signal light over there one to show with the signs for the general public. I know when I was with DOT that was one of the major complaints about the lack of sufficient signage here on Kaua'i. And when I realized it myself there's none to signify where the police stations are located. So I think DOT could look into it and have those signs made like you have for the hospital. I thank you.

Council Chair Furfaro: I saw Mr. McCormick make some notes. Thank you very much, Joe. Is there anyone else who would like to testify on this item? If not, I'm calling the meeting back to order.

There being no one else wishing to testify on this matter, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: I think this item is for receipt.

Ms. Nakamura moved to receive C 2011-200 for the record, seconded by Mr. Kualii.

Council Chair Furfaro: Thank you, any further discussion? Mr. Chang.

Mr. Chang: Thank you, Chairman. The whole purpose of bringing the agenda item was to reinforce education and just to remind the public because I think we all agree no matter if you're a pedestrian, if you're riding your bike, you're in your cars, we see people pretty much without any conscience passing busy intersections, passing schools, passing, you know, a few construction zones, I mean no matter where you're at and I think as councilmembers we've spent some time waving signs on the side of the road in any direction you see, so I believe that the whole purpose is once again, we can educate people and reinforce them about the law. And I'm glad Lieutenant Scribner and the Chief brought up the fact that there are only a few states, perhaps just a few countries that don't have the law. But I think when you travel, as a good tourist or a traveler, you're always asking those questions. You're constantly asking those questions. So it's apparent to me that there really is no excuse no matter where you're from because if in Rome do what the Romans do. So you gotta figure out what the Romans are doing here in Hawai'i on Kaua'i.

One of the statistics that Mr. Scribner presented was a report in 2008 that there were, throughout the country, 6,000 deaths. But equally important there are half a million injuries and a lot of those injuries, no matter where you're at, can be very bad. It could be something that lasts with you for the rest of your life. So I think that's what we should remind all the people. I want to thank you, Lt. Scribner, for bringing the brochures out to the rent-a-car companies. I went and talked to several managers and I actually went to the airport yesterday and when the law first came into effect on May 23, 2010, people were used to letting the renters know that this is the law and that it little much phased out as just was your warning, so it's a good way that we can send a communication to the visitor industry people and the rent-a-car people. So I wanted to thank you for that because interestingly when the law first took into effect, Bluetooths were selling off the record and now there's rarely any kind of purchase because people are thinking that they are getting away, but yet it is definitely still the law and I just wanted to remind the public that even if you pull on the side of the road because you do have to use your phone, your key needs to be out of your ignition, your vehicle needs to be turned off. And again, Lieutenant Scribner and to the Chief, thank you very much for this wonderful presentation that you did and the bullet points and again, to yourself, Mr. McCormick, when I called you to just remind you or ask if you had any questions, you were on top of it. And the interesting part about it is when this beautiful blue sign or what have you is created, I like the fact that it'll originate from Kaua'i, so when other counties ask for what had happened or where it's at, then we can say it originated from the island of Kaua'i and Kaua'i can be, as always, what we want to be a leader, not a follower. And I just also wanted to say thank you for volunteering or sharing the fact that we could be using these portable/moveable signs, you know the click-it-or-ticket signs. So I saw you chatting with Mr. Scribner, so perhaps the both of you can coordinate strategically where would be the places that they could go and then, of course, this will just be a reminder again and again that there is a law not only certainly for the visitors, but again a reminder for the local people. So thank you all very, very much. Thank you, Mr. Chair.

Council Chair Furfaro: Thank you. Any more discussion before we receive this item? Do I have a motion and a second to receive? May I have a motion? I do have a motion? Okay. No further discussion, all those in favor to receive, signify by saying aye.

The motion to receive C 2011-200 for the record was then put, and unanimously carried.

Council Chair Furfaro: Thank you very much. I'd like to move to the next item with the auditors here, even if we go a few minutes past 12:30 p.m. Thank both, gentlemen.

There being no objection, Communication C 2011-196 was taken out of order.

Mr. Nakamura: Council Chair, we're on page 1 of the council's agenda on communication C 2011-196.

C 2011-196 Communication (04/28/2011) from the County Auditor, transmitting for Council information, the Audit of Implementation of the Recommendations of the Cost Control Commission Concerning Energy Savings.

Council Chair Furfaro: Thank you. First and foremost, let me say to the audit department, thank you for being patient today. This communication was something that surfaced in a discussion with Councilwoman Nakamura and we're going to focus on your energy audit. Rules are suspended; if you can go ahead and introduce yourself and give us an overview.

There being no objection, the rules were suspended.

ERNESTO PASION, County Auditor: Good afternoon, Council Chair and Members, for the record county auditor Ernesto Pasion. And with me is Lani Nakazawa, audit manager. For the benefit of the viewing public, although our reports are accessible through our website, a lot of households still don't have computers so I would like to read my executive summary. The County uses electricity to operate county buildings, street lighting and signals, parks, landfills, county utilities, solar and water, and other county functions. Historical statistics show that in calendar year 2010 the county used 20,028,843 kilowatt hours of electricity for which it paid \$7,361,416.00. When compared to calendar year 2009, calendar year 2010 usage and costs increased by approximately 4 percent and 22 percent respectively.

Under the Kaua'i County Charter, the goal of the cost control commission is to reduce the cost of county government while maintaining a reasonable level of public services. The commission made 36 recommendations for saving energy and electricity in 2008 and 4 more in 2009. Mayors Baptiste and Carvalho told the commission they intended to implement these recommendations.

Most of the recommendations have not been fully implemented because no one was accountable for implementing them. The county does not have a systematic process for implementing commission recommendations and no one was tasked with implementation. No one was accountable for implementing commission recommendations. As a result only 3 of the 40 commission recommendations or 7 percent have been fully implemented. Energy savings could have resulted from timely implementation with the commission's recommendations. Instead, county energy use and costs increased due to inaction. The county lacks a strategic approach to energy management.

We recommend that the cost control commission direct the office of boards and commissions to develop a systematic process to ensure that the commission recommendations accepted by the mayor are communicated to the departments or functions responsible for implementation and ensure that it receives complete, regular and timely reports on the status of pending recommendations, including reports on the progress or lack of progress towards implementation.

We recommend that the mayor distribute copies of the commission's recommendations for saving energy to all departments, develop a strategy for implementation, and ensure the departments and functions have adequate resources for implementation and monitor implementation.

We recommend that the county create green teams and energy managers in each department to increase departmental awareness of energy conservation. Since the county is a large water user and much of the county's electricity is used to pump water, the county should also consider promoting water conservation to decrease energy usage; empower an energy manager to develop and implement short- and long-term energy management strategies and an action plan that establishes

baselines, benchmarks, goals and incentives for each department or function; develop a process to ensure accountability for energy use, such as billing departments and functions for consumption whenever feasible.

The county is relying heavily on energy savings performance contracts with an outside vendor to achieve energy efficiency, so we recommend that the mayor direct the appropriate resources to ensure that the energy savings performance contracts are adequately monitored to enforce vendor contract commitments; timely assess and collect any penalties due to the county under the contracts; and lastly require a complete evaluation of each performance contract at the end of the contract periods. Thank you.

Council Chair Furfaro: To the auditor's department, I just want to make sure for public use here we clarify the total dollars consumed included the water department.

Mr. Pasion: That is correct.

Council Chair Furfaro: Okay, and what we're basically saying, if I look at the statistics appropriately, the variables that we don't necessarily have controls on, the 22 percent increase was really related to the actual cost of producing the kilowatt hours, but the kilowatt hours increased 4%?

Mr. Pasion: That's correct, Chair.

Council Chair Furfaro: So between energy cost, oil adjustments and so forth, 22 percent is accounted there, but the actual increase in kilowatt hours was 4 percent.

Mr. Pasion: That's correct.

Council Chair Furfaro: Of the 36 recommendations made by the cost control commission, did they focus on say a half a dozen of them, 6 of them that were the higher consumers with the most immediate results? Your report kind of led to that when you said reducing water consumption obviously that draws from pumps. Production of air conditioning, reduction of chilled water with some of our energy management systems, was there a sequence of, say, in the business world we would say your top 10 percent of customers versus what I'm saying is our top 10 percent of consumers here.

Mr. Pasion: Or follow the 80/20 rule.

Council Chair Furfaro: What's that?

Mr. Pasion: Or follow the 80/20 rule because...

Council Chair Furfaro: Yeah, the 80/20 rule, 20 percent of your customers produce 80 percent of your business, 20 percent of your clients consume 80 percent of the electricity. That's the reference. Did the cost control commission make a recommendation like that?

Mr. Pasion: They made recommendations particularly directed to the water and sewer departments because a majority of the usage of electricity are consumed by both departments. The water department, they use a lot of

electricity to pump the water up to build up the pressure and then of course when the water is used, it has to go to somewhere else, and the sewer department uses a lot of electricity to transport that different kind of water.

Council Chair Furfaro: And Ernie, would your department be able to isolate the consumption as it relates to kilowatt hours and to the actual cost of the energy? Could you isolate the water department increases, the sewer increases and the chill water for county buildings?

Mr. Pasion: If you look at page 6 of the report that we issued, it shows the major county users of electricity and water represents 39 percent, and wastewater or sewer represented 22 percent. So if the majority of our efforts are directed towards these two major users, it will dramatically reduce our energy costs. However, with the way we account for our energy costs, the users have to be more accountable than what it is right now because right now most of the energy costs are charged to the building department.

There is one person in the building division of the department of public works that is tasked with this particular...

Council Chair Furfaro: Task.

Mr. Pasion: Yeah, right, task, and so each department, especially those that are exclusively using their building should be accountable for the use of the energy rather than that one division or one area in the building division of the department of public works.

Council Chair Furfaro: I don't disagree with that and recently Council Vice Chair Yukimura and myself had a meeting with the engineering department. We identified these three high-consumption areas, but I would think it would also be beneficial if that operating problem with a sole accountable person and these high consumption areas is presented to the cost control commission and they can encourage developing some plan there. So I don't disagree with what you're reporting, but I do want you to know that Vice Chair Yukimura and I did meet with engineering and building maintenance on this particular subject, so. Mr. Bynum had his hand up. Mr. Bynum.

Mr. Bynum: Yes, thank you very much for the report. You know, I'm really interested on a systematic level because a lot of it is new over the last couple of years. The Audit Department is new, boards and commissions, like the cost control commission, really didn't function for a long time until a couple of years ago, and now we have that support. So our county has invested a considerable sum of money in monitoring our performance and engaging a diverse group citizens to help support and give us recommendations. So we need to develop mechanisms for that accountability and that's part of what your audit says, correct?

Mr. Pasion: Right.

Mr. Bynum: And so it's more, whether it's energy or whatever, are we just going to do these reports and do they actually lead to behavior change? So in this course, you mention 36 recommendations. As part of your audit or as part of that follow-up, was there kind of a line item response from the administration on each of those 36 why they didn't move forward with them? Because you know, the cost control commission may say, hey, this is someplace we want to go and then the administration says that's not a high-value one, but this one is. Was there that kind of line-by-line analysis done?

Mr. Pasion: I'm not aware of that. We don't know. We'll be appearing before the cost control commission on Monday. They invited us, and I just got a note here that the managing director will be providing updates as they implement the recommendations that we provided.

Mr. Bynum: I think as we proceed as a county, when we have boards and commissions that make recommendations, particularly cost control commission is going to be in that realm, right, and so I applaud your audit, your choice to make an audit of hey, we have this commission, we empowered them, we gave resources, are we paying attention?

And what is the role of the council in all of that in the long run? There are areas where we choose to ask questions and try to solicit answers. So I just want to say that over time, it's important that we not only have these mechanisms in place, but we find ways of who plays what role in being responsive. If I'm a volunteer on the cost control commission, I want a line-by-line response to the recommendations that I spent time and energy working on, right. And whether who's responsible for that, what is the role of the council, what is the role of the auditor are, I think, norms that we're still in the process of developing. So I want to follow up maybe with the administration. Of these recommendations, why did we choose to implement these and not these? Were these not valuable? And I think the commission deserves that kind of feedback as well. Would you agree with that?

Mr. Pasion: I do. I believe that the cost control commission is doing a good job of looking at the different major functions of the county and to control costs, and now it would be up to the administration with the oversight of the council to make sure that these recommendations are implemented.

Council Chair Furfaro: Vice Chair Yukimura?

Ms. Yukimura: I appreciate Councilwoman Nakamura's raising of the question and getting this on the agenda. Thank you and I appreciate the auditor's focus on this area and bringing to light the various, both recommendations and the lack of follow-up. And I appreciate your recommendations. I think they are basically good. Water is really under a semiautonomous agency and I'm wondering if there were any recommendations directed to the Water Board which is the managing board for the water department?

LANI NAKAZAWA, Audit Manager: I'd like to say that we actually made a presentation as well...

Ms. Yukimura: Is your mike on?

Ms. Nakazawa: ...before them. How is this now? We actually made a presentation before them. So they are aware.

Ms. Yukimura: But they're not listed in your recommendations. I mean you've mentioned the commission, office of boards and commissions and the mayor, but is there any charge or direction to the water board?

Ms. Nakazawa: The focus actually was primarily on looking at how and whether the commission's recommendations were implemented. So specifically the commission included the department of water in some of its overall recommendations, such as implementing the green teams and interdepartmental activities, but it did not make specific recommendations directed to DOW.

Ms. Yukimura: Okay, I mean because the cost control commission has an important function, but their function isn't to implement their recommendations. Their recommendations are to be implemented basically by the administration, as the county auditor has said, with oversight from the council. And in the case of the recommendations regarding 40 percent of energy use, which is the water department, it would be the board and the managing water engineer right, who would be responsible for that. And I think that would actually cover all of the energy users, basically the mayor and the water department.

Ms. Nakazawa: Yes.

Ms. Yukimura: So in terms of your recommendations as to the mayor, can you repeat that, what that is? I mean I think what we're doing here is what Councilmember Bynum mentioned, we're still trying to figure out the process of audit and then the follow-up of audit.

Mr. Pasion: We recommend that the mayor distribute copies of the commission's recommendations for saving energy to all departments, develop a strategy for implementation and ensure the departments and functions have adequate resources for implementation, and lastly, to monitor the implementations.

Ms. Yukimura: I think the key is develop strategies, and then to monitor the implementation of those strategies. So that's excellent and I think the green teams idea would be also good.

Mr. Pasion: But that's, you know, Vice Chair, the green teams would work if each department has a budget for energy. Right now some departments don't have any budget for energy and they don't care if they are using a lot of energy or not because they're not being accountable for that.

Ms. Yukimura: I'm not sure if that is actually true. There may be very low-cost items that can come out of green-team suggestions and you don't want to give budgets until they come up with suggestions and have a cost item to it, right? So I don't think the budget comes with the formation of the green teams. The green teams will start working on the issue. They'll identify some no-cost solutions and then they may identify some cost problems.

Mr. Pasion: The building division has that, I would say, they have the statistics for each major user and although they are taking all the charges, if they can identify those and then transfer it to those departments...

Ms. Yukimura: Correct.

Mr. Pasion: ...and then be accountable for their usage and if they go over it, then they would be.

Ms. Yukimura: However, the Chair and I discovered in our conversations with public works that there are not meters that actually correspond with the users. So you don't have that basic information of who's using what and until we do that, you don't have those feedback loops that can determine what the strategies will be and then monitor how those strategies are working. So one of the first steps is to get those meters installed or sub-meters or whatever they are so that we can get good use information.



Ms. Nakazawa: I think what we've found in our audit is there are a number of regulatory restrictions that prevent the installation of meters within each of our major buildings. However, even without a separate meter, there are methodologies that can be applied based on the number of occupants, the equipment being used in a space that may be used to allocate electrical use.

Ms. Yukimura: How effective is that?

Ms. Nakazawa: Well, I would say at this point it depends on the effectiveness of the methodology, but lacking any other mechanism, the alternative is if you don't use a methodology and make departments somewhat responsible for their own use, no one assumes responsibility because no one is required...

Ms. Yukimura: I think that might require further investigation. I mean we have meters that measure refrigerator uses, so there must be ways to measure subunits and so forth. Surely there are and I have no idea what those regulatory obstacles are, but we need to just get over them and figure it out and get it done because you have to have this correlation of use to user to know which user.

Council Chair Furfaro: First of all, I would like to say that the Council Vice Chair makes the same points that I had with the building department and believe me, I have some experience here. We have tenants in a hotel where you sub-meter the shop. They pay common area maintenance and they pay for their use. Okay, so there's always (inaudible). But I do want to say before we break for lunch and we'll come back to you after lunch. I'm sorry for that inconvenience, but the cost control commission takes 36 recommendations. I want to make sure you understand what I'm saying. Let's narrow it down to the biggest savings areas. We have issues about buildings. We don't even know how we're handling our new building and we have three tenants in there. We have civil defense, we have police, and we have the prosecutor's office, and they get one maintenance electric bill. And nobody buys into their accountability. That building has Trane energy management system. They have one person that measures the chill water for the whole building. People need to know that they're going to be held accountable and Ernie, you're very familiar with this when we did this a couple years ago when it came to us in the risk management areas allocating to the various departments their potential exposure on insurance losses, potential claims, that it was taken out of finance and allocated. So here's 36 recommendations. First of all, that's too many to measure the key results and I note Councilwoman Nakamura has a number of questions when we come back. But I will give the floor to the Vice Chair when we come back to finish your questioning, but we are going to come back. There needs to be a lot more discussion here. Okay?

Mr. Pasion: Okay.

Council Chair Furfaro: So it is 12:40 p.m. We have no public hearings after this. We will be back with the auditor's discussion at 1:40 p.m. We are in recess for lunch.

There being no objection, the meeting was recessed at 12:40 p.m.

The meeting was called back to order at 1:54 p.m., and proceeded as follows:

Council Chair Furfaro: Thank you everyone. We are back from our lunch recess. We're going to start up again with the auditor and in fact there are only five members at this time. I'm trying have someone attend from Building for some of

the later questions. But I think when we left, Council Vice Chair Yukimura had the floor and then I'm going to recognize Councilwoman Nakamura. So Vice Chair Yukimura, you have the floor.

There being no objection, the rules were suspended.

Ms. Yukimura: Thank you. Two more questions. So, and this again is along the lines of Councilmember Bynum's questions in terms of protocols, establishing protocols with respect to audits. Are you asking for a formal response from the administration to your audit?

Mr. Pasion: Vice Chair, we did get a response. If you look at the audit report...

Ms. Yukimura: Oh, it's in there?

Mr. Pasion: Yes, if you want me to read it for you one by one.

Ms. Yukimura: No, no, no, I'm sorry.

Mr. Pasion: We have the finding one and we have a recommendation and they came back with an answer.

Ms. Yukimura: Oh, okay, excuse me then. And are they proceeding then along the lines of your recommendations?

Mr. Pasion: I would say you're asking the wrong person for that because I'm not the mayor. The mayor is the one in charge of implementing.

Ms. Yukimura: Oh, so maybe what we need to do is schedule a meeting with the administration.

Mr. Pasion: That would be a good idea.

Ms. Yukimura: Okay, all right, that's very good. And then my last question is, it occurred to me that part of energy savings come from the design of programs or buildings and even this idea that we have three agencies in one building, our police building, and only one meter is a design issue. So that perhaps, in the procurement of new buildings and the construction of new buildings, from even our Kaiakea Fire Station, we're doing retrofits now of a photovoltaic system. But perhaps it's really in how we procure new buildings that it's at that level that we need to make requirements for energy savings and good design. So in some respect, maybe the procurement office needs to be involved in some of this.

Mr. Pasion: Let me just turn this over to Lani Nakazawa. She used to work for the PUC and I believe she is aware of some rules and regulations regarding meters and sub-meters.

Ms. Nakazawa: Yeah, I think that's absolutely correct, that energy efficiency needs to be incorporated in...

Ms. Yukimura: Can you speak louder or can we raise the volume of this mike?

Ms. Nakazawa: I think you're absolutely right that hopefully, at some point, the county will make it a matter of routine to incorporate energy efficiency in everything. Construction, planning and implementation as well.

Ms. Yukimura: So that might be a recommendation even as you do future audits. Maybe that whole procurement process...

Ms. Nakazawa: Yes.

Ms. Yukimura: ...might be included, although, it's also part of the administration. So that could be an administration response and initiative as well.

Ms. Nakazawa: Right.

Ms. Yukimura: Okay, thank you very much. Thank you, Chair.

Council Chair Furfaro: Thank you and before we go much further, I think there will be a conclusion of this discussion to have somebody from the administration participating in a series of questions that we might pose. Obviously, one of the questions comes up as we've had discussion before the break, does the PUC oversight prevent us from having several meters based on we only have one customer? I think there's still a way around that, so that we can hold, for example, in the police building, we can hold police, the prosecutor and civil defense accountable for their consumption. I have also placed a request in to have someone from building here today that we might pose a few questions from. On that note, Councilwoman Nakamura.

Ms. Nakamura: Thank you, Chair. Thank you Ernie and Lani for preparing this report and for your presentation. I had some questions. I wanted to first of all highlight your finding, which is that most of the recommendations haven't been fully implemented because no one was accountable for implementing them. That's a really key finding and as a result, only three of the 40 commission recommendations have been implemented. And the other key finding, I thought, was that the county lacks a strategic approach to energy management. Now I wanted to follow up on those findings, and so my questions will be related to that.

The first one is on page 3 of your report, you talk about "we recommend that the county does create the green team, empowers an energy manager, etc." Who within the county? In the other sections of this recommendation, you have a specific entity, the mayor, the cost control commission, or so forth, but in this recommendation it's very broad. And by having it broad, I believe it lacks accountability. So I'd like to ask for whether you had any thoughts about who within the county ought to be ultimately responsible?

Mr. Pasion: Well I would say that the mayor is the chief executive officer of the county and the council provides the moneys for the county to operate, and then the mayor with his departments are...

Ms. Nakamura: So do you believe that all of those recommendations, the bullets, should actually be under the mayor?

Mr. Pasion: Exactly, yes.

Ms. Nakamura: Okay. So can we make a note of that in our record? Also, I want...

Council Chair Furfaro: Would you just yield the floor for a second?

Ms. Nakamura: Sure.

Council Chair Furfaro: I just want to point out to the auditor's department, two years ago we accepted a sustainability plan. In the sustainability plan we identified an overall energy manager who is accountable to the director of finance, who measures the results of the financial burden of energy with a dotted line to the mayor. So I just wanted to make sure that we have a document that was outlined in the energy sustainability plan and that should also be a discussion point. Thank you very much, councilwoman.

Ms. Nakamura: The other part that I wanted to make note of is that under the section of the cost control commission's responsibilities, you've outlined that they...let's see, it says, "direct the office of boards and commission to develop a systematic process to ensure the commission recommendations accepted by the mayor are communicated to the departments or functions." And I'm just wondering, is that really the role of the office of boards and commission to do that? To direct the office of boards and commission to develop a systematic process to ensure the commission's recommendations accepted by the mayor are communicated to the departments, is it their role or is it the mayor's role to communicate to the departments?

Mr. Pasion: Well, the boards and commission office was established to support the boards and commissions. So whatever the boards and commissions decide to do, make recommendations to the county, it's that office that brings that message to the mayor. And then the mayor then has to implement any, if he agrees with or he or she agrees with the recommendations, then it would be the mayor then to establish the strategy to implement such recommendations.

Ms. Nakamura: So the mayor decides which strategies to implement, which recommendations to implement?

Mr. Pasion: Ultimately, yes. Command responsibility.

Ms. Nakamura: And it just seems that I just question whether that's really the role of the board to then communicate to the departments what the mayor decides to do.

Ms. Nakazawa: Well, I think that the intention of that statement is to have the commission ask the office of boards and commissions to make sure that there is follow-up on the recommendations, i.e., to check to see whether the mayor has, in fact, communicated responsibilities to his subordinates. So that was the intention to have the office serve as the commission's arm in following up and seeing that implementation is actually occurring.

Ms. Nakamura: Okay, thank you. Under the recommendations for the mayor, the first bullet there is "to distribute copies of the commission's recommendations for saving energy to all departments" and it seems to me that distributing the copies is not clarifying direction.

Mr. Pasion: Let me refer you to page 2 of the response from the administration regarding that. It says that redistribution of the commission's energy savings recommendations to all departments should be done, but the actual implementation of many recommendations requires funding—okay—which departments may or may not have access at this time for fiscal year 2012. It is our

intent to instruct departments to implement non-cost alternatives as feasible, along with any recommendations that are currently funded and to report back to a central point of contact on a quarterly basis as to progress. This practice can be reported to the mayor and the commission. So that is the response from the administration.

Ms. Nakamura: Right, and so it seems like the second bullet is really the key here, that the mayor...it says, to develop a strategy for implementation. And that's something that we have not seen, an overall strategy. Would you agree with that?

Mr. Pasion: Yes, we haven't seen any plans yet, but when we issued the audit, the administration does not...they respond to our recommendations, but they don't have to follow up with us because we don't have the enforcement authority. It's the council that has the enforcement authority as to oversight of the administration.

Ms. Nakamura: Right, so one of the things that under many of your recommendations you refer to an energy manager, and yet I don't see in here, because we all know we have no energy manager within the county of Kaua'i, so do you have any recommendations about whether there is a need for an energy manager or whether it can be done within the existing positions that we have now?

Mr. Pasion: According to the response that we got from the administration on page 5, it says, the county needs to have that key position of energy manager that can implement, train and monitor. So it's up to the administration then to establish that position and fully authorize that person to implement and empower that person to get the accountability from all the users.

Ms. Nakamura: So should that not be a key recommendation of this audit?

Mr. Pasion: It's in there.

Ms. Nakamura: It's buried. I mean it's in there under the response from the administration, but it's not very clear in your findings. Should that not be a key finding that we lack an energy manager?

Mr. Pasion: On page 3 of my summary it says, recommend that the county empower an energy manager to develop and implement short- and long-term energy management strategies in an action plan that establishes baselines, benchmarks goals and incentives for each departmental function. It's there.

Ms. Nakazawa: When you say empower that means to create a position for an energy manager?

Mr. Pasion: That would be up to the administration to decide. It's not the auditor's office to decide that.

Ms. Nakamura: But within your analysis of the existing personnel structure leads you to believe that there is no one doing that now.

Mr. Pasion: That is correct. There could be someone already there but that person is not being empowered to do it.

Ms. Nakamura: Okay and then to follow up, on page 17 of your report, in interviewing the two key energy managers of the county, or people who do some of this work, the building chief and the energy coordinator, they both said that the current structure doesn't allow them to direct other departments or function to conserve energy or implement energy conservation measures because they are both in line agencies. So what is your recommendation about where this energy manager should be located within the county?

Mr. Pasion: Well, it's up to the administration to decide that. I mean, if I were the...my recommendation would be for somebody to report directly to the mayor.

Ms. Nakamura: Thank you.

Mr. Pasion: Have that person empowered and not be part of a line function, reporting to department heads. Go directly to the mayor and say, hey, I am the...

Ms. Nakamura: So someone who reports directly to the mayor.

Mr. Pasion: I am the czar for energy for the mayor.

Ms. Nakamura: That would be your recommendation based on your analysis?

Mr. Pasion: Yes.

Ms. Nakamura: Thank you.

Council Chair Furfaro: Ernie, you do know that is not the recommendation that's in the energy sustainability plan. The energy sustainability plan recommends that the energy manager reports directly to finance. Finance is overall responsible for all of the bills and invoices for the county and therefore, it leads us to understand where the building guys are saying well it's not our jurisdiction to direct people. When it comes to financial matters overall, the finance department does have the say, and the policy and direction can be reported to through the mayor. But we thought in that piece, you don't meet your budget allocations, you are accountable to the director of finance. We felt that energy was so important that there should be someone reporting to the director of finance with a dotted line to the mayor. I just wanted to point out that difference. Mr. Bynum?

Mr. Bynum: No, please continue.

Council Chair Furfaro: Oh, you still, I'm sorry, go ahead.

Ms. Nakamura: I also thought your presentation of the recommendations was very effective.

Mr. Pasion: Thank you.

Ms. Nakamura: One of the things that the county administration is doing is the energy performance audit. I recently learned that the water department, however, is not participating in this energy performance audit because they have chosen to go on their own, pursue it on their own terms. Did you have any thoughts about whether the water department should be part of one county energy audit or does it make a difference in your opinion?

Mr. Pasion: Would you kindly direct that question to the county attorney because it has some legal implication regarding our charter and the make-up of our county?

Council Chair Furfaro: Councilmember, we'll be glad to bring the county attorney up to answer that question later. Let's pursue this right now rather than have a tripartite agreement on dialogue here.

Ms. Nakamura: Okay, because I mean the water department...we float bonds for the water department. It seems like...

Council Chair Furfaro: You're talking to the choir here, okay.

Ms. Nakamura: Okay, all right, and I also think that one of the observations made in here about clusters of departments not being metered and so forth, one of the things that came out in the report was that even the council services, the historic building and the annex, the energy bills are paid by the department of public works.

Council Chair Furfaro: Building Division, yes.

Ms. Nakamura: So even within our own house, we are not accountable for our energy use.

Mr. Pasion: That's correct.

Ms. Nakamura: And so maybe that might be one place to start. I know it ends up getting paid by the same county of Kaua'i, but that would be...I think we would need to show how we do it internally. So that might be a place to start.

Mr. Furfaro: I just want to point out again and this is with the auditor's department should clear because this is an old subject. Councilwoman Nakamura, the issue is not with us putting in the sub-meters. The issue is with the public utilities commission saying their interpretation that the county buildings are one account, one customer, and I'm saying this is where we need to find out if we can separate it with getting some understanding with the public utilities commission that we need to change that policy.

Ms. Nakamura: Okay, and so I would agree with Councilwoman Yukimura that probably what we need to do is to follow up with administration and to ask these questions and to look for that strategic energy plan to carry out these recommendations. So thank you very much for your findings.

Mr. Pasion: Thank you.

Council Chair Furfaro: You'll stay there; we'll call up the county attorney for two questions as follow-up to Councilwoman Nakamura a little later. Stay right there. We'll continue. Mr. Bynum has the floor now.

Mr. Bynum: I just wanted to follow up on...I think this is a really healthy discussion that is happening right now in terms of outstanding questions that Councilmember Nakamura asked. And I just wanted to highlight one exchange because it goes with what I was saying earlier about we, meaning the collective we, need to establish norms about how we go forward once you present.

Because what I heard Councilmember Nakamura saying is shouldn't your recommendation have been more specific? And you went back and said, hey, we said someone should be empowered and then you're kind of saying, well, we don't want to get too specific because that's the administration's call whether they use internal, current people, they reassign someone, do they create a new position. You're saying we just want someone that has that responsibility and accountability and like what Councilmember Nakamura was saying, council services, we're not accountable for our electric bill. What I hear your findings saying, hey, somebody at council services should be accountable to the electric bill no matter who pays it, right?

Mr. Pasion: That is correct.

Mr. Bynum: And so make that a priority. It's kind of like that commercial on TV now where the guy is saying, I don't care how much the shipping costs, the company pays it. But his boss is looking over his shoulder, right? It's like that's the kind of attitude you want to avoid, right? And so one place that the mayor can respond is in his response to your audit. So I asked earlier, there are 36 recommendations, was there a line item response to all 36? Probably not as yet. But one opportunity is in the response that is included in your audit. Is that correct?

Mr. Pasion: That's correct.

Mr. Bynum: So that's one opportunity. Because the administration, I don't think has to implement and take every recommendation that is made by a board or commission or a consultant say in the energy sustainability plan. I know when I read that plan, there are some that I really want to implement and there's some that I would disagree with, but I think the administration should be willing to say, we intend to implement this and here's how and no, we don't intend to implement this because of these factors, whether they're cost factors or pragmatic/practical reasons. But for a board or a commission, and I think that is the point of your audit, to say put their time and energy, lay out these specific requests, and not get a specific response is something that I would hope we collectively come to whether...and I'm still trying to sort in my mind, where are those opportunities, and who is responsible to see that there is that follow through. I think we all are on some level, but I think in your role I see that balance that you're trying to do of making a very strong and clear recommendation. Hey, individuals in our departments need to be held accountable. Someone needs to be the manager. Now whether that's a new hire or a restructure, hey, that's your call, mayor. Have I got this right from your perspective?

Mr. Pasion: Right. Now let me just...the cost control commission made two recommendations, one in 2008 and one in 2009. Thirty-six in 2008 and four in 2009. (Inaudible) 40 recommendations. A transmittal letter was sent by the boards and commissions' office to the mayor dated July 29, 2009. Remember now, we're in 2011. It was agendaed. The recommendations of the cost control commission was placed on the agenda. The response of the mayor to the council in regards to the recommendations made by the cost control commission dated July 29, 2009 and it says here, pursuant to section 28.05 of the Kaua'i County Charter, I hereby transmit a copy to you and from you that these recommendations are under review by the administration. It is our intent to implement both recommendations with additional details and timelines to be announced once our review is complete. So maybe the review is not completed yet, so they're still in the process of doing a plan of strategies up to this point. But there was commitment from the administration that they are going to implement the recommendations by



the cost control commission based on this letter that was agendaed and it was received by the county clerk September 1, 2009, and assigned a communication number C-2009-307 and it's in an ordinance.

Mr. Bynum: So the administration in essence said, we intend to implement all of these recommendations.

Mr. Pasion: That's how I read this letter from the mayor.

Mr. Bynum: I find that surprising because there are 40 recommendations, each one needs an analysis. That's the perception and the recommendation from the cost control commission. All of those recommendations have to be filtered through existing resources, pragmatic/practical reality. There may be things that the administration understands about that recommendation that the cost control doesn't. That's why there has to be this dialogue. One of the reasons I'm very supportive of your office is this sense that I think all of us in government have, we spend a lot of money on planning and we don't focus on accountability for the implementation of those plans. Sometimes that accountability is on this council, sometimes it's on the administration, depending on what those are. I just wanted to kind of highlight that discussion that I really appreciate Councilmember Nakamura's questions of you of saying, shouldn't have this been more specific? Because you're in a learning process, along with us, I assume, and what I hope the outcome is that we do establish norms that whether it's a board or commission or this council or the auditor makes recommendations that there's some accountability and some response that's specific, not oh, we're going to take all 40 of them. I don't know that that's a really good response personally. If I'm the cost control commission, I'd say, really, all of them, without analysis? So anyway, thank you.

Council Chair Furfaro: Anyway, since Mr. Bynum is the finance chair, those reports came in 2009. I do anticipate that we will have something soon that covers his question about all 40 of them are being implemented? When? How? What's the checklist? So I'm sure that follow-up will be in Mr. Bynum's committee. That's how we get our committees assigned. Now on the flipside, I have to say, I'm bringing up an example about a shared building, but what does that have to do with the water department? All the electric bills that use and pump water all go to one department. They can measure electric consumption, kilowatts and so forth. It's all the water department. They need to know they need to set some goals. Sewer, all of the lift stations whether they're in Wailua or Koloa, they're all electric bills that go to the sewer department. So it starts by setting some realistic objectives, setting some goals to reduce that energy, and in the recommendations, despite what Mr. Bynum says, I'm not approving all of the recommendations that are in the energy plan, but there are a few in here that are tied to the audit that you can pluck, like the energy manager and now he can say, okay, here's the current results of the water department and consumption of electricity. Here's the current level of consumption for sewer and lift stations, and start establishing some goals, some targets. We need to focus, so we're back to my question about 20% of these costs are generating 80% of our potential savings. That can be implemented. Lani, on the other side and you can just acknowledge what I am saying, this metering, whether it's the historic county building or the police/fire, not police/fire, but police, civil defense and the county prosecutor's office, there's a question with the public utilities commission that we need to hurdle. That assignment can go to the county attorney's office to say, hey, we want to start holding these departments accountable and therefore we want to separate a few of the meters by sub-metering. Those are some of the key pieces and I think Mr. Bynum led up to it. Trying to do all 40 at once almost makes it a puzzle. Focusing on five to six items that have the

biggest costs probably nets us the biggest potential savings. Would you agree to that? Would you agree on that, I'm talking to you, the auditor? Would you agree that the 80/20 rule here...

Mr. Pasion: Definitely, definitely, Chair, yes.

Council Chair Furfaro: Okay, okay, Mr. Kuali'i, you had a question?

Mr. Kualii: Aloha and mahalo Ernie and Lani. I really appreciate this audit and I think you've done a thorough job and I've only been able to skim through it some; I want to go even deeper into it. But I think basically when you're talking about an audit of the implementation of the recommendations of the cost control commission, and with 40, I saw 40, so when they kept saying 36, I wasn't sure, but now you've clarified it as 36 from 2008 and 4 more from 2009. Clearly and you've said it that the reason only three of them were even implemented was basically because nobody was working on it. The mayor or the administration just didn't put any time or energy into it because they didn't have the staff or resources or what have you. And the three that were completed, one of them is develop and implement air conditioning plans for the historic county building. Well, we're in the middle of renovations and I'm sure that would have happened anyway, whether it was part of these recommendations. But clearly on the pie chart of the county users, the water department has 39% and wastewater has 22%, so that's 61%. So even if we couldn't do them all, but we started there and focused there, it seemed like we could maybe save the county a lot of money.

But one of the things I thought about was like say water at 39%, do you know what piece of that is the regular administrative side and what piece of it is the actual production of water? Because for the rest of the county it's the lights and air-conditioning in our administrative operations. That's our operations. But for water and wastewater, they're producing a product and burning the energy, right? Because the only recommendation there I saw from 2008 was that the department of water and wastewater should be required to develop cost-saving opportunities for their operations through use of alternative energy sources. So they're talking about the piece that is the production of the water, the pumping of the water. Do you know was that broken down of that 39%?

Mr. Pasion: Well 39%, most of that is for the pumping of water to generate the pressure so that it can go into...

Mr. Kuali'i: So then maybe it's not...

Mr. Pasion: We can get you that information.

Mr. Kuali'i: Yeah, I would be interested to know, but I can guess that it is mostly for the pumping of the water. So then really you have to take this one step deeper and go from not just the energy savings, but the goal of...and that's implement water and energy-efficiency practices and principles of waste minimization and pollution prevention to reduce waste and increase conservation. So I mean, the reducing the water usage, I can't believe that wasn't one that was at least attempted or started because it doesn't have any kind of markings. It's not completed. It's not fully implemented or even partially implemented. So if we're talking about saving energy, and we know Kaua'i utilizes so much electricity and so much expense for pumping the water, then we have to be doing something about conserving water. So where throughout the county have we even started with low-flow toilets and auto shutoff valves and just some of those basic things? Is it true there's nothing here? So that recommendation wasn't even started?

Mr. Pasion: We are not aware of any.

Mr. Kuali'i: And the other thing I thought about, too, was in that sense, the breaking down and identifying the different departments, it seems more doable with the police and the prosecutor and the civil defense because they're in the same area but sort of in separate wings of the building or portions of the building. But for everybody else that is clumped under "public works," that only really makes up 10% of the entire cost. So I mean while it's important to know, to hold people accountable and to have the green teams and push them to conserve and produce, use less electricity, use less water, I don't know if it's a big expense to actually put in meters, to move in that direction for only 10% of the pie. If we can do it without, we might not necessarily need these (inaudible) and you're saying that it's not necessarily due to regulations and may not be allowed.

The only other thing I thought, I noticed somewhere in here too was that there was something about different rates. Like, we could get a lower rate if we were a smaller user? Is that what it is? And in some instances we are because it's divided up, but in other instances we aren't?

Ms. Nakazawa: Right. What it is, is that the rates are determined by the amount used. So generally speaking, although there are exceptions, the less you use the lower your rate is. So it ties back to your previous point that if we can reduce usage, we can decrease expense.

Mr. Kuali'i: I do think that that has to be one of the top focuses because it takes up such a big portion of the pie of our expenses. I really want to say I appreciate all of Councilmember Nakamura's questions. She was very thorough and thoughtful. She asked some of my questions, but I just want to get the answer. But I have to say again, I'm looking forward to more audits, if this is what they're going to look like because there's a lot of really good information and the other thing, too, I wanted to say is earlier today, Councilmember Bynum might have thrown out the rhetorical question about what the role of the council would be, and I think it's pretty clear that there are two different ways we can be involved with this. One is to pass legislation and set policies that make things happen because we can wait on the administration, but we also have a responsibility to the people. And then the other thing clearly, you said that very clearly too because a lot of it hasn't happened because there wasn't funding. So, yeah, it's the administration's responsibility to ask for that funding, but we set the budget and we can play a role in that way, too. But thank you again for all your work on this.

Mr. Pasion: You're welcome.

Council Chair Furfaro: I'm going to go to Mr. Rapozo, but before I do, Lani there was more parts to your question about less use. It's less consumption of energy during peak demand periods, there is another tier of rates.

Ms. Nakazawa: Yes, exactly.

Council Chair Furfaro: So I want to make sure that Councilmember Kuali'i got complete.

Ms. Nakazawa: I appreciate that, thanks.

Council Chair Furfaro: So lower consumption at peak rates, which are usually from 7:00 a.m. to 9:00 a.m. and 4:00 p.m. till about 6:00 p.m.

And the other portion is I will be covering this later in our treasurer's report, but I don't think the problem is money because I think the auditor can acknowledge, we tried to give more money and the fact of the matter is that we are under projected operating costs for ten months. So, Mr. Rapozo, the floor is yours.

Mr. Rapozo: Thank you. Ernie, was there a cost control commission recommendation for 2010? Are you aware? If not, that is fine.

Mr. Pasion: I'm not aware of it. But since we did the follow-up on the recommendations by this audit, they have resurfaced their recommendations. As a matter of fact we have been invited twice already on this particular audit because they're interested in how it's going to be addressed by the administration. So Monday, if you guys are available, 1:30 at the liquor conference room, there is a cost control commission meeting, and it will be in their agenda. I hope that the administration will be there too.

Mr. Rapozo: I think and I know both Mr. Bynum and Mr. Kualii mentioned the council's part in all of this and you know, all of this is really governed by the charter and the mayor doesn't have an option of reviewing recommendations and picking which one he wants. By charter he has 30 days to send it over to the council in the form of an ordinance with his comments so he can either say I agree or I disagree. But doesn't have a choice to say I'm going to take recommendation 1, 5, 9, and 11 and toss the rest out. If the commission and in 2009 they did request that they submit it over to the council within 30 days, that's it. The mayor has no choice. The mayor has to have somebody draft up the legislation to meet that recommendation. And in 2009 what was sent over to the council was a letter, which you read, which says, I hereby transmit a copy to inform you that these recommendations are under review. That's not allowed by the charter. The charter doesn't give him the right to say here are the recommendations, but we're still looking at it. The charter mandates 30 days, 30 days to come to this body with his comments and this body, through the public hearing and ordinance/bill process, makes the determination of what gets passed or not. The cost control commission was set up for one purpose to reduce spending. It wasn't there to provide guidance or advice, no. It was to provide recommendations that within 30 days appear here in the form of a bill. That bill goes through the process and at the end of the day it would be this body that determines whether or not the recommendation will be implemented. That's what the charter says. So I don't want to get into this discussion where they'll pick what they want and what they...he doesn't have that right and that authority under the charter. And I think that's what's missing in all of this discussion. It's not a matter of just sending it over and say we're looking at it, we're thinking about it, no. If the recommendation was to implement an energy manager, then there needs to be a bill at this body with a position and funding requests for an energy manager. Thirty days, it needs to be here. It goes through the process, and it's going to be this body to determine whether or not this county will do it. That's what the charter says. Is that what we're doing? No. And I think that's the clarity that needs to be stated on this table today is that...you want me to read the charter, I can read the charter?

Council Chair Furfaro: I tell you what is easier, I'll have Amy answer the charter question when we bring up the county attorney.

Mr. Rapozo: This is the same scenario we had when the cost control commission reviewed the golf course fees. The discussion has already been stated, the legal opinions have been given. I remember because I was here. Unless the legal opinion has now changed, that's the big discussion we had during the golf

course fees, that's how it ended up here as a bill. That's what the charter says. If somebody wants to interpret it differently, fine, but that cost control commission was not set up as an advisory council. Please, give them little bit more credit than that. It is a cost reduction commission. So I just wanted to clarify that. So I'll pursue the 2010 issue because I don't recall seeing any bills coming across with recommendations from the cost control commission. And it's only if the cost control commission requests that it come here in the form of an ordinance and in 2009, if you look at the communication that was presented with the recommendation back in July 2009 to Mayor Carvalho, it was quite clear because they even reference the charter section which requires the 30 days. It's in the letter to the mayor from the cost control commission. So I think everybody was aware of that requirement. I know the commission was and if that's not going to be the policy or the process, then I think we have some issues and I think the cost control commission, basically we're taking away their authority and their mandate, in my opinion, by the charter. Thank you.

Council Chair Furfaro: And like I said, let's not pursue this anymore until I call up the county attorney. Obviously a recommendation is simply a recommendation, and there are time deadlines to get to the council, but it doesn't indicate it's mandated by any ordinance process and so forth, but it is mandated and I think the only exception to that is salaries.

Before I excuse you from the chair, I do want to make sure I clarify something earlier because I do believe within the county of Kaua'i we have some very, very dedicated employees, and the comment that needs to really be functioned here, there are employees that are more than willing to participate in an energy savings process. There are employees in the county that turn off air conditioning and shut off lights and so forth. What we're talking about is the need to actually voice a policy that we can implement uniformly across the board with employees. But I just want to make sure we're very clear; we have some pretty dedicated employees that are more than willing to participate in short-term strategies with controlling lights and air conditioning now, and long-term strategies that implement policies. So are there any other questions before I call up the county attorney? Councilwoman Yukimura.

Ms. Yukimura: Yes, on the issue of an energy manager, I notice that your report was filed before we finished the budget, the council finished the budget. And in that budget, we did fund a sustainability manager in the mayor's office, as I recall. And we had a lot of questions about how that position was going to be used and that's why we did not fund an energy manager in OED, which is what the energy sustainability plan recommends. We deferred that for a year so that we could understand how the sustainability coordinator is going to be used. And so I can see the rationale for you not specifying the creation of a position, but allowing the administration some discretion and possibly using an existing position or in coming to the council to request a new position. So that is a potential for implementing the recommendation of your audit, is it not, to use the sustainability coordinator if the mayor sees fit?

Mr. Pasion: That could be a possibility. It's up to the mayor to do that.

Ms. Yukimura: Okay and so that is a question that I guess we need to ask the administration when it comes before us.

Mr. Pasion: Just to supplement what the chair said a while ago that there are some people that would like to fix some of the things that we need to do, I remember when I was still the deputy county clerk and we moved into the annex building for the elections and so we were the sole user for that building and Doug Haigh, I would like to give credit to Doug Haigh, he wanted to charge the electric use for the whole building to elections. And it was changed because they wanted consistency in the way they handled all the charges of electricity at that time, including the historic county building. And so there was an override of him and so the charges for the annex is still being charged to the building division of the department of public works.

Ms. Yukimura: So it's going to take both some physical changes, perhaps sub-meters, I mean surely we can get sub-meters?

Mr. Pasion: There is no sub-metering required in the annex when we moved there because we were the only occupants of the building and the recommendation of Doug Haigh at that time was to charge us because we had our own meter, but he was overridden.

Ms. Yukimura: I see, okay. And so those are the policy changes that need to be made because even in the case of the annex building where there is a single meter tied to a single division, if you will, the bills have not been charged accordingly.

Mr. Pasion: That's correct.

Ms. Yukimura: Okay, thank you.

Council Chair Furfaro: Okay, if there aren't any more questions, I would call...oh, go right ahead.

Mr. Kualii: You might just point me to and I might just find this. Let me just ask the question. On page 3 it says, the county is relying heavily on energy savings performance contracts with an outside vendor to achieve energy-efficiency. So I just kind of wanted to hear something about that. You're saying something is ongoing? We are expending funds to accomplish this goal?

Mr. Pasion: You know the OED is the one that's monitoring the performance of the outside contractor for that and so it would be more appropriate for the council to send a communication to ask that information to George Costa.

Mr. Kualii: I'll ask him. I'll go there. Thank you, I just needed to know.

Council Chair Furfaro: I think Councilman Kualii's question was more directed at programs that allow us to enter into energy management company cost-sharing improvements, where the savings is substantial, and in return, rather than capital improvements, the energy company that we entered into agreement gets a share of the utility savings. And that is what he's referencing in this and I don't think we have any of those programs in place right now, just for your information, Mr. Kualii.

Mr. Pasion: They are currently working on an RFP right now for that.

Council Chair Furfaro: Right, they're apparently working on one but we don't have a cost-sharing. I've had some experience there and somebody needs to do a lot of due diligence on the forecasted sharing versus what we then write the check to the entity that installs it. It's not as easy as it sounds. So on that note, I would like to revisit some questions with the county attorney. I thank you very much for your presentation.

Mr. Pasion: Thank you, council.

Council Chair Furfaro: May I have the first deputy county attorney up? Thank you, Amy. I understand Al had to step out, but my first particular question I want to make sure that we all have a general understanding that the council controls legislative laws of the finance and budget process for the county. The administration is responsible for the implementation of those particular initiatives that we take through new legislation, ordinances, and really the approval process on money spent. The question here comes up as it relates to the cost control commission.

This is the first question and it is my understanding that the commission may request of the mayor to make ordinances that can be supported and submitted to the council, but they do not have the authority to go directly to the county. They have the guidelines in their charter to make a request of the mayor to submit ordinances.

AMY ESAKI, First Deputy County Attorney: That's correct, the charter does state that the commission may request from the mayor that a recommendation be made.

Council Chair Furfaro: Thank you. The next item I just want to touch base on is this question with the public utilities commission and our ability to start sub-metering areas where there is shared responsibility. We probably should submit something to the county attorney's office trying to get an interpretation or find out how we can apply for a variance as we consolidate buildings and we have shared heat recovery systems and shared air conditioning that the allocations are there because they may be a smaller portion of our budget. But for example, the police department on a \$17,000 a month electric bill should pay their share, the civil defense people should pay their share, the prosecutor's office should have their piece, and those funds be allocated out from the building department to these particular functioning divisions. But it is my understanding, or at least I've been told, as we pursued this, we need to get some form of clearance from the PUC and I would hope the county attorney's office can help us raise that question.

Ms. Esaki: We would be glad to look into it and even to check with the PUC if there is a possibility to do sub-metering.

Council Chair Furfaro: Okay and I will ask the clerk's office to send over some communication. Mr. Rapozo.

Mr. Rapozo: Thank you. Amy, I just want to make sure we clarify, the charter does say that the commission may request?

Ms. Esaki: They may request. It does not say shall.

Mr. Rapozo: Right and in 2009 they did in the form of a letter on July 29. But once they request, the charter states that within 30 days, the mayor has to submit...



Council Chair Furfaro: Shall

Ms. Yukimura: Those are recommendations.

Mr. Rapozo: I'm sorry?

Council Chair Furfaro: They shall.

Ms. Yukimura: Recommendations.

Mr. Rapozo: No, it says "the commission shall prepare and advertise a written annual report summarizing its recommendations prior to the end of each calendar year." In 2009 they filed their report and it showed four recommendations. There were four. "Thereafter, the commission may request that any of its recommendations be drafted in ordinance form for its introduction through the mayor." "The mayor shall," shall, "with mayor's comments thereon and within 30 working days of receipt," which in this case would have been probably the end of July or early August, "submit to the council for its immediate consideration all ordinances proposed by the commission." This was amended in 1984 and 1996, so you need to look at the current version, not the old charter. So my point is this, the first part of the charter under reports says they have to file a report with their recommendations. In 2009, there were four recommendations. Out of that four, the commission, by their letter dated July 29, requested that three of them be forwarded to the council. In fact it's obviously a request because it even tells the mayor, "please be aware that the section 2805 requires that the mayor shall with your comments within 30 days of receipt submit to the council for its immediate consideration all ordinances proposed by the commission." It's in the letter dated July 29, 2009.

Ms. Esaki: Well, Councilmember Rapozo, what I'll do is I'll take a look again at that letter.

Mr. Rapozo: Okay, but I want to make sure that people understand there's a difference between "may" and "shall." And the commission, again, they chose out of the four recommendations to send three to the council through the mayor.

Ms. Esaki: Right, I'd like to see what the recommendations are as well.

Mr. Rapozo: Okay and it wasn't done. I mean in fact within 30 days we got a letter that said, hey, we're reviewing it, and that's not appropriate under the chapter. That's what I'm saying and if you need a copy of the new charter, JoAnn, it's right there.

Council Chair Furfaro: I gave her mine. So, Amy, we'll send that over in a question.

Ms. Esaki: Thank you, I appreciate that.

Council Chair Furfaro: And you know "they shall submit this report," "they may request." In the first grade, I asked Amy Tamura, if she'd marry me and she chose not to. We were six, okay.

Ms. Yukimura: I have a question.



Council Chair Furfaro: I'll give it to Mr. Bynum.

Mr. Bynum: Just a follow-up on Councilmember Rapozo because when we kind of re-established the cost control commission, I remember talking with the people and reading the charter and asking for advice from our staff and the county attorney because I was surprised when I read the charter that the cost control commission has tremendous authority under the charter. And I remember asking all of the people when we were reviewing, do you understand that you have the power to require the mayor to put forward an ordinance, right? This is pretty extraordinary power for a board and commission. And I asked for copies because I didn't have. That is also my interpretation of this memo that the commission said these three findings, we want sent in an ordinance. Now it might be a unique ordinance and so is part of this question we're going to send over, because I really want an answer too, and I think if that was the intent of the cost control commission, it seems to be the case from these memos. Although it's not real explicit, but they do, as Mel said, they're saying, hey, remember, the charter says you have to turn this into an ordinance. Now what kind of ordinance would these three recommendations make, right? We need to look at all of those issues. I just wanted to say, was that clear, the intent of the cost control commission from this memo as it appears to be and then what kind of ordinance would be...how would we implement that pragmatically? Would we have an ordinance that says the county departments, each shall have a person designated, and I suppose you could do that, right? So I just want to make sure that we have a whole analysis of this question because I think I was very clear that the cost control commission had pretty extraordinary power in my mind to say, hey, we feel so strong about this, you present an ordinance to the council period. You have to do it, right.

Ms. Esaki: We'll take a look at it. And also I wanted to thank Council Chair for stating that there are a lot of employees who are conscious about energy use, who do turn off the lights when they leave the premises, who do turn off the air conditioning. Also, the board and commissions, through the cost control commission, when they meet, they turn off every other light and they don't turn on the air conditioning, so we swelter there sometimes. But they take that to heart about energy conservation. Thank you.

Council Chair Furfaro: Thank you, Amy. I have one more piece. So I'm sure Peter Morimoto in the audience was hearing this discussion on the "they shall submit a report," "they may request an ordinance," but we'll get that over in the form of a question. And the other piece, obviously, earlier we talked about some clarification on separate metering for the PUC. And then, of course, I guess this question about possibly adopting a section or a portion of the energy sustainability plan that deals with an energy manager. Could I ask the office to look at that verbiage, showing the recommended reporting to the director of finance with a dotted line to the mayor? Those are the three questions.

Ms. Esaki: Sure, we'll look at the questions.

Council Chair Furfaro: We have another question from Vice Chair Yukimura. Go right ahead.

Ms. Yukimura: I think mine is along the lines as Councilmember Bynum, but since you'll be doing a review of it, I wanted to just ask it here. It seems that there are some recommendations from the cost control commission that are not conducive to an ordinance. That is, for example, upgrade exit lights to LED

technology, which is really an administrative function. There is that charter provision against the violation of separation of power. So I just want to ask you to address that.

Ms. Esaki: Sure.

Ms. Yukimura: Thank you.

Ms. Esaki: Thank you.

Council Chair Furfaro: And again, I just want to point out that this pick and choosing of...when I was in the first grade, the council ultimately, even if a recommendation is made for an ordinance, the final vote is here at the council for implementation. So, Amy, thank you very much.

Ms. Esaki: Thank you.

Council Chair Furfaro: And I'd like to take some public testimony on this auditor's agenda item. Ken, I saw you first, why don't you come up first?

KEN TAYLOR: Chair and Members of the Council, my name is Ken Taylor. First, I'd like to thank the auditor and staff for this audit, and it certainly raises a lot of issues and concerns. Before I get into specifics, earlier in the discussion, prior to lunch today, I sort of got the feeling that you folks were trying to put a burden of overseeing implementation of some of this back onto the auditor and staff.

Council Chair Furfaro: You got the wrong feeling. Move on with your questions and testimony. You got the wrong feeling.

Mr. Taylor: Well, it came across very strongly.

Council Chair Furfaro: You know, Ken, you come up and make some very strong statements about things that leave perceptions, okay, that this council doesn't care and so forth or we've implemented things that there should have been more public exposure. You just made a statement, I just answered you, continue with your testimony. You got the wrong impression.

Mr. Taylor: Well, I'm sorry if I got the wrong impression, but that's the impression I got and I'm entitled to my impressions.

Council Chair Furfaro: Absolutely, absolutely.

Mr. Taylor: And I wasn't saying that you folks weren't doing your job.

Council Chair Furfaro: You implied. Let's go on with your testimony.

Mr. Taylor: The issue here that has troubled me for some time is that we've known that the water district and the sanitary district are the biggest consumers of electricity in the county family. And we hear about putting solar on the administration building and so on, that's great, but it doesn't solve the problem. Where in the water situation, if we put a good conservation plan in place, which would not cost much money, but could save anywhere from 10 to 40 percent of our

water consumption, which would be a big savings in electricity because it would eliminate the need for pumping, that is one area that the county has to go. There's no question about it.

I find it interesting in reading about water districts and sanitary districts on the mainland, where they're paying only 10 to 15 cents a kilowatt hour, are putting solar panels in like crazy all over the state of California to cut their electric bills. When you're looking at these pumps that the water district uses, some 75 horsepower and some larger, maybe some smaller, I know in talking with the manager at the water district, they have been in the process of upgrading the pumps to using a little bit less electricity. But a 75 horsepower pump running 12, 18, 20 hours a day is going to consume a lot of power.

Mr. Nakamura:

Three minutes, Mr. Chair.

Mr. Taylor: If we can cut that in half or three-quarters by installing solar panels over these areas where we have or put in larger banks or participating in other activities of alternative energy, it makes a lot of sense. But this issue has been around for a number of years and there really hasn't been an opportunity to really talk about it and deal with it. And because of the structure of the county with the water district sort of being county, but it sort of isn't, it makes it very difficult to deal with these issues because I don't know where your power is to direct the water district. They have their own board and general manager, and they sort of operate over there in the side room, called the county water district, but really not part of it. And so, I think there's a lot of room for changing the consumption in good management of consumption of water. And I don't see that we're really doing that. I mean the bills are getting way up there and that in itself helps a little bit, but I think it was KipuKai who said earlier about low-flow toilets.

Where I came from in the late 1980s, the water district went into a situation of changing out the toilets that used more than a gallon and a half. They gave a small rebate to anybody, it was \$85 per toilet. Twenty thousand toilets were replaced in that process. That saved a lot of water. And when you save that water, it's water you don't have to pump. I mean this is year-in and year-out that savings continues to go. Same thing with low-flow shower heads and so on. I mean there are a lot of things. Educating people and how they use water and so on. These are very important things that we can no longer neglect. And so anyway, my comments, thank you very much.

Council Chair Furfaro: Ken, I have a couple of questions. Have you ever had an opportunity to speak on these items in front of the water board? You are correct, they are semiautonomous. But I would want to correct you on a couple of items. For example, when I was talking with correcting some of these particular misunderstandings there, there is a different rate of utility usage for peak demand. I don't necessarily think all of the 75-horsepower pumps, as you said, function 24 hours a day. They function when they need to replenish tanks that then operate on gravity.

Mr. Taylor:

I understand.

Council Chair Furfaro: So we certainly have heard your other particulars about low-flow toilets and shower heads and so forth, but the water board is semiautonomous. They use us to leverage borrowing power. They certainly have seen us giving them money at a better rate for some of the capital improvements that exist in their CIP improvements. But really, some of these ideas I would encourage you to speak to the water board and not to make assumptions on our role.

It is the charter that puts a 7-member board there, of which the county engineer and a couple others are automatic appointees, but they do run with their own general manager, but are subject to some financial oversight by us.

Mr. Rapozo: One real quick question.

Council Chair Furfaro: And I just want to also say that one of the disappointments that I have is they are not going to use our umbrella auditor. They've decided to contract their audit separate from the county, which puts us at a little bit of a disadvantage because it would be very effective for us to have CPAs evaluating the whole county's programs, especially when it comes to conservation of energy. We had hoped that we could have convinced them to put it under one umbrella. Now on that note, Mr. Rapozo has a question for you.

Mr. Rapozo: Thank you. In the jurisdiction you were talking about, the rebates for low-flow toilets, you said \$85? Was that like a rebate?

Mr. Taylor: You got \$85 for every toilet that you replaced to a 1.6 gallon.

Mr. Rapozo: That's a fascinating idea. I just was trying to figure if we had a thousand people swap their toilets and I didn't realize how much water is saved in one of them low-flow toilets. We just changed our toilet and it's amazing how much less water. So I'm just thinking for an investment of \$85,000, I wonder what the cost-benefit would be in the savings of water. It's an interesting concept that I will pursue definitely.

Mr. Taylor: It's a big number.

Mr. Rapozo: I have to believe that it'll be more than \$85,000. We'd recover that investment pretty quickly, I think.

Mr. Taylor: I think so.

Mr. Rapozo: Thank you.

Council Chair Furfaro: Well, as I said, bring that idea to the water board. They can identify the \$85,000 that they are willing to pay out to individuals who want to go to a low-flow, but that discussion has to happen there. Thank you very much.

Mr. Taylor: Can I just make one more observation?

Council Chair Furfaro: All right, you can make an observation. Go right ahead.

Mr. Taylor: This doesn't have a page number, but it's to the county auditor from the managing director and finding no. 1. He says no one was accountable for implementing commission recommendations. I just find that really difficult in this time and age. I mean, maybe if the county was just getting started, but for this county to be in place for all of these years, and for somebody to write in here that's referred to as a managing director to say no one was accountable for implementing commission recommendations, I think that's terrible. And I think it shows the problems we have with county government structured the way it is today. Thank you.

Council Chair Furfaro: Ken, I'd just like to add to that. You read that out of auditor's manual? The same request is in the sustainability plan that JoAnn and I authored, which suggests the accountability is held under an energy manager. So thank you. Mr. Mickens?

GLENN MICKENS: For the record Glenn Mickens. Thank you, Jay. Just a short comment, maybe a question, from what I hear on this issue, Ernie and Lani and their staff have done their jobs of investigating, analyzing and recommending. I really appreciate this new auditor's office and you people funding the auditor's position. Even the cost control commission has done their job recommending 40 issues that need addressing, but the ball seems to have been dropped at the administrative level. As KipuKai said, only three of the 40 issues have been addressed, which is something wrong there. So what or who must be responsible for this lack of inaction? Be it energy or anything else. Who sees that the mayor shall within 30 days submit to the council for its immediate consideration all ordinances proposed by the commission? Is there somebody that is supposed to be responsible there for it? I mean, you know, like Mel pointed out and you in your directive, Jay, that somebody is responsible for doing this. But who is that person then if the administration doesn't do their job? Who steps in and says, well...

Council Chair Furfaro: What would you like me to do, Glenn? What would you like me to do?

Mr. Mickens: Just answer the question.

Council Chair Furfaro: No, and the question is what would you like us to do with the administration?

Mr. Mickens: I don't know. I'm saying is there somebody in the administration that is responsible?

Ms. Yukimura: Yes, the mayor.

Council Chair Furfaro: The mayor, right now, and our recommendation, if you've been following this, is pursue what the auditors are recommending, to find somebody or the sustainability piece that basically says, hey, we think we're at a point that we need an energy manager.

Mr. Mickens: Right.

Council Chair Furfaro: But if you're asking me right now who's in charge, it is the mayor's kuleana.

Mr. Mickens: Okay and if the mayor doesn't do his job, there's no responsibility then.

Council Chair Furfaro: I suggest you go and revisit the issues of the charter as I've spoken today. We handle financial issues. We set policies and legislation. It is the administration that then is responsible to implement those, okay?

Mr. Mickens: Right, I understand, it's their responsibility to implement what they're told to do. But if they don't do it, then there is nobody to force them to do it then or to do their job, is that right?

Council Chair Furfaro: You know, I'm going to need to probably gather my mana'o here for a moment because it's very clear to me, but JoAnn, as Vice Chair, seems to have an answer and she raised her hand to answer your question.

Ms. Yukimura: Glenn, it's county government 101. The mayor is accountable to the people of Kaua'i at election time and to citizens who might also go to his office and petition.

Mr. Mickens: Okay.

Council Chair Furfaro: Or go to the water board with ideas.

Mr. Mickens: Right, right, right. I understand.

Council Chair Furfaro: But we are supporting an idea that because it's such a substantial cost that we think it's time for an energy manager.

Mr. Mickens: And when you ask for an energy manager, which sounds like good common sense for the amount of energy that we're using and everything, and you submit that recommendation or ordinance or whatever, what happens with it?

Council Chair Furfaro: Well, I would think at this point the next step is to request of the auditors to demonstrate to us if we added a person such that with salary benefits and so forth, demonstrate to us a return on that investment, you know.

Mr. Mickens: Sure.

Council Chair Furfaro: And when you look at that return on investment it's hard to monitor 3 items of the 40 that are recommended because those three items might have been substantial items when you look at the total energy piece.

Mr. Mickens: Just like Mel was pointing out about the low-flow toilets, same thing, right? Investment would be probably miniscule.

Council Chair Furfaro: I'll answer your question. I'll not pose you for more narrative, but yeah, that was a pretty good point because I think what Mel was saying is if somebody can convince the water department to allocate \$85,000, which will end up being credits back to the individual people that invest in low-flow toilets, they in return may save water consumption.

Mr. Mickens: True, true. Thank you, Jay.

Council Chair Furfaro: You're quite welcome. Councilwoman Yukimura?

Ms. Yukimura: Yes, Chair, before you call the meeting back to order, could I ask for Ms. Nakazawa to...I just want to get clear about those regulatory obstacles to separate meters?

Council Chair Furfaro: Certainly. For the audit department, Lani, we've got some questions that I brought to the attention of the group here about regulatory hurdles that we might have to and with your deep background in that particular area, I think Council Vice Chair Yukimura would like to probe that question a little bit more. Go ahead, the floor is yours.

Ms. Yukimura: Thank you, chair.

Ms. Nakazawa: Unfortunately, I hate to disappoint you, but in that particular area it's not as deep as it should be. But I have, however, provided Peter with the name of a contact, Ed Nakaya of KIUC, who has specific information about what, at least, they view as being the regulatory issue.

Ms. Yukimura: Okay, so it's a problem with sub-meters?

Ms. Nakazawa: Yes. It's a problem with, as I understand it generically and if you can excuse me for my dated background on this issue, KIUC's view is that the existing PUC tariff under which they operate does not allow them to sub-meter single buildings since the county is the subscriber to the service provided to the entire building.

Ms. Yukimura: And what is the damage or harm to KIUC?

Ms. Nakazawa: I'm not sure about that.

Ms. Yukimura: Okay, all right. Well, we need to know that right away because in our talks, the chair's and my talks with public works, that was really the first step to get some real alignment of user and usage so that we could hold people accountable or measure successes or failures. But either way, it's really hard to incentivize people or do anything without good data, as you know.

Ms. Nakazawa: Right and it's the first thing we asked also is why not?

Council Chair Furfaro: Well, it's at a point now that Councilwoman Yukimura and myself have posed that to the building department, you're raising the question, but as can you see from today's discussion, we're going to take matters into the council's hands by sending that question over to the county attorney's office because it's a hurdle that we must find a way to get the sub-meters done so that we can have people participate in energy management.

Ms. Nakazawa: And I'd just like to request on my part, if it's at all possible after you receive that information, it would be helpful for us to have as well.

Council Chair Furfaro: We will not keep it from you.

Ms. Nakazawa: Thank you.

Council Chair Furfaro: If not, I am going to call this council back to order seeing no one else wanting to testify.

There being no one else wishing to speak on this matter, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: Members, is there discussion here for today?  
Mr. Bynum?

Mr. Bynum: I want to thank Mr. Rapozo for catching something I didn't see before, and I think it's important for us to follow up because I said earlier that I was struck when we reformed the cost control commission that they had this fairly extraordinary power to require that an ordinance be brought before

this council and they appear to have requested that in 2009. The specific things that they asked for execute an energy savings performance contract, I think, is in the works, but then said that each department would have a designated person and assigned staff. Now that might be an awkward ordinance, but this should have triggered a review that said, hey, can we write an ordinance like that and a dialogue because the charter, when it says "shall" that's the law of the land, right? So I really am anxious actually for the county attorney to follow up on this. I think Councilmember Nakamura, you might recall this, when you were a member of the commission at the time, yeah? And so can I ask, was it the intention that an ordinance be formed? Is that...

Ms. Nakamura: (Inaudible.)

Mr. Bynum: Okay, so but I think...

Ms. Nakamura: I do recall Councilman Rapozo coming to the cost control commission to remind us of our powers.

Mr. Bynum: Right because I know I talked to the members when they came here for interviews and said, hey, you know, you've got some power here if you choose to use it. And if they choose to use it and the analysis was well, this isn't practical or pragmatic, they should have been right back at the commission to have that dialogue. We can't just take this commission's recommendations when they put it in this form and say, hey, we want to remind you we have this power. That needed to be acted on and it still does, so thank you.

Council Chair Furfaro: Thank you for that and we don't know if in fact the administration, who would have been the person who requested the ordinance, we don't know if they actually responded back to the cost control commission.

Mr. Bynum: We're going to follow up with questions about that.

Council Chair Furfaro: Yeah, I think that was one of the three I shared. So if you're holding me accountable, I accept. And so any further discussion here? Council Vice Chair?

Ms. Yukimura: Well, I think this is a very important subject both in terms of environmental impact and financial impact to the county. I appreciate the auditor's focusing on it, and I appreciate Councilwoman Nakamura bringing it to the agenda. And I want to say that if there's any issue of sustainability in the administration, this should be one of the keys. And so not having really understood yet what the sustainability coordinator will do, but knowing that it's a highly paid position, I'm hoping that at least this job will be covered by the coordinator in some way or fashion. And I'm hoping that in the next months we'll actually get a clarification on what the administration seeks to do with this very important audit and the very important recommendations of the cost control commission.

Council Chair Furfaro: So Mr. Bynum, if you choose to put an item on your committee in a month or so, we'll be glad to entertain getting it on the agenda.

Ms. Yukimura: To have the administration come before us?

Council Chair Furfaro: Yes.

Ms. Yukimura: That would be excellent.



Council Chair Furfaro: Okay, Mr. Rapozo?

Mr. Rapozo: Yeah, just as a follow-up, I would just ask that we send over a communication regarding the 2010, the two meetings of 2010 of the cost control commission. I believe the charter requires them to meet twice a year, second and final quarter. It doesn't say calendar or fiscal, so I'm not sure, but if we could get the reports from the subsequent cost control commission meetings with recommendations. And then as well, follow up with the administration on the 2009 recommendations, more specifically the letter that we talked about dated July 29, if, in fact, they're still going to honor that?

Council Chair Furfaro: Well, if you heard me earlier, I think the first question is did the administration respond back to them and that question will be going over. Would the staff so note that and Mr. Rapozo's request that we get an update on the 2010 last quarter report. How does that sound?

Mr. Rapozo: Thank you, thank you very much.

Council Chair Furfaro: Fine, okay. Any further discussion? Go right ahead.

Ms. Nakamura: Just one quick process question because I'm not familiar with the audit process.

Council Chair Furfaro: Let me have them come back up to answer your question. Ernie, can you come back up and listen to this question?

There being no objection, the rules were suspended.

Ms. Nakamura: So this April 2011 audit is considered the final report? The final audit?

Mr. Pasion: That is, councilmember.

Ms. Nakamura: Is there any opportunity for anyone to comment on this audit and concerns that have been raised subsequent to this publication and what is the process, if there is?

Mr. Pasion: Well, the cost control commission, since we acted on their recommendations by a post-audit of the recommendations of the cost control commission, they have put into their agenda and I think this coming Monday we'll be the second item that they have put on their agenda to follow up on the recommendations, make sure that since we already issued the audit that some action is going to be done by the administration.

Ms. Nakamura: I think my question is about not the cost control commission's follow-up, but if we have raised some concerns about what is in the presentation of this audit, or what is in this audit, the contents and recommendations, if we wanted to have some clarity, what is the process?

Mr. Pasion: Then you would have to...from us or...

Ms. Nakamura: From the council, from the members of the council?

Mr. Pasion: Well, if you have any questions regarding the audit report, if you need more specifics that are not in the report, then you would have to send a request to us to look into it some more. Is that what you're...

Ms. Nakamura: I think more concerns about the way information was presented, things that have been raised in this session, clarifications.

Mr. Pasion: If you could send a correspondence to us and then we can look into it if you need more clarification.

Ms. Nakamura: Okay, thank you.

Council Chair Furfaro: Ernie, can you just meet with various councilmembers if they have subsequent questions that might, depending on what kind of answers they get, it might lead to a new agenda item.

Mr. Pasion: Chair, our office is always open to all of you.

Council Chair Furfaro: That's what I wanted to hear.

Mr. Pasion: And we've been inviting some of you to come and visit with us.

Council Chair Furfaro: You have answered my question.

Mr. Pasion: Some have already taken advantage of the invitation, but some have not yet.

Council Chair Furfaro: Okay, Mr. Rapozo?

Mr. Rapozo: And I guess the follow-up to that is should there be new information or additional data that there is a possibility of having an addendum or a supplemental report to this audit, is that something that...

Mr. Pasion: We could do that.

Mr. Rapozo: Okay, thank you.

Council Chair Furfaro: Okay, Mr. Bynum, do you have a question for the auditor? If not...

Mr. Bynum: No.

Council Chair Furfaro: No? I can relieve you. Thank you very much, Ernie. Okay, the meeting is called back to order.

There being no further questions, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: Mr. Bynum.

Mr. Bynum: I said earlier I thought this was a really healthy process and if I understood Councilmember Nakamura's question a minute ago, it's like we have this audit, it's before us, what happens next and what can we do as a council and in my mind we're doing some of that right now. We're generating questions about this. This discussion today focused our attention on some specifics

that we're going to ask for follow-up. I think we can also as a council ask the administration to come and comment here and respond to any of the findings that are in the audit, and as individual councilmembers, if we think an ordinance is warranted, we can promulgate one. In addition to that, the cost control commission has that authority to, in essence, require the administration to write an ordinance and present it before this council if they specifically make that recommendation and we're going to follow up about whether that was followed up. Some of the things that we're going to be sending over, I think, as a result of this audit, we probably wouldn't be having the discussion without the audit. And I believe under our current rules, any councilmember can propose a bill and have it before the body at least for initial consideration. So I think the discussion today went a long way towards what I want which is establishing norms about how do we respond to audits? What is each person's role? And I think we made progress on that goal today. Thank you.

Council Chair Furfaro: Okay and for the staff, I want to make sure that the communication—I don't know who's taking notes on this—but we want to reference Section 28.05 that the commission may request any of its recommendations be drafted in the form of an ordinance. We would like to also hear the mayor shall then with the mayor's comments thereon and within 30 days of receipt submit to the council. We do not have that second part. We don't know what the mayor responded to them and so let's make sure that we request any subsequent communication.

Okay, on that note before we go, Mr. Taylor, may I extend to you some courtesies here in the form of you know we have to be very delicate with some of the communications that imply certain things are matter of fact when we don't know. So if I can just say that, I want to offer you a sense of my response. Sometimes a response requires another question to the administration and we're going to pursue that today. Thank you very much. Do I have a motion to receive the auditor's report? May I have a motion to receive the auditor's report.

Mr. Kuali'i moved to receive C 2011-196 for the record, seconded by Mr. Chang.

Council Chair Furfaro: Thank you, any further discussion?

Mr. Rapozo: I am under the impression that it's going to show up in your committee, Mr. Bynum?

Council Chair Furfaro: That's the plan.

Mr. Rapozo: I heard that earlier. I just want to make sure before we receive this item. I mean if it's going to come up at a subsequent committee meeting, in your committee, then I'm okay with the receipt. But I don't want this to go away. I do want to get an update on this audit report from the administration.

Mr. Bynum: Right and then pursuant to a number of follow-up questions we're going to send in writing and I think the Chair probably was correct in saying that it may be a month.

Mr. Rapozo: About a month, okay, thank you.

Council Chair Furfaro: Mr. Bynum, can I then take it, as we all have the agreement as I suggested, and Mr. Rapozo has just confirmed, that perhaps you sign that correspondence that indicates the questions to be discussed in your committee. Okay, all those in favor, please signify by saying aye.

The motion to receive C 2011-196 for the record was then put, and unanimously carried.

Council Chair Furfaro: We're going to take a break, 10-minute break.

There being no objection, the meeting was recessed at 3:30 p.m.

The meeting was called back to order at 3:48 p.m., and proceeded as follows:

Council Chair Furfaro: Okay, to recap the last item very quickly again. I want to make sure questions referencing the mayor's July 29th communication, please make a note that the communication requires the mayor to be able to respond to the cost control commission within 30 days. That is in there and in those recommendations, items 1, 2 and 3, none of them actually make a request for an ordinance. They make comments to the effect, like, execute an energy-savings performance contract. It doesn't say the county shall focus on introducing an ordinance to set up green committees or anything of that nature. We're going to follow up on these two items in correspondence in Mr. Bynum's committee. Thank you.

I would like to go to the rules committee next, but I see Vice Chair Yukimura and I was going to have her run the meeting. She was the chair of that committee. Okay, well, yeah, let's take the two communications over here from the treasurer.

Mr. Nakamura: Council Chair we're back on page 1 of the council's agenda on communication C 2011-194 and C 2011-195.

C 2011-194 Statement of the Condition of the County Treasury as of February 17, 2011: Mr. Chang moved to receive communication C 2011-194 for the record, seconded by Mr. Rapozo.

C 2011-195 Statement of the Condition of the County Treasury as of May 16, 2011: Mr. Chang moved to receive communication C 2011-195 for the record, seconded by Mr. Rapozo.

Council Chair Furfaro: I would like to support that move to receive as you may know that Mr. Rezentes is out ill and Mr. Spanski went to Honolulu today for the purposes of signing off on a refinancing of the bond. As I mentioned earlier, if there's any particular questions dealing with the statement as it relates to the last financial piece, I do, in fact, do my own budget comparisons. It has been Councilwoman Nakamura's request that starting the new year that the finance department does this for us in future reports. But I would like to move to receive this and then go to Vice Chair Yukimura and the rules committee.

Mr. Nakamura: We have a motion and a second, Chair.

Council Chair Furfaro: Any comments from the audience? If not, we would like to move to receive this item. All those in favor signify by saying aye.

The motion to receive C 2011-194 and C 2011-195 for the record was then put, and unanimously carried.

Council Chair Furfaro: Thank you very much. We'll get a complete report next month, but I have some detail that I track, if any of you wish. Can we go and let Council Vice Chair Yukimura run the next segment of the meeting because it deals with the rules.

There being no objection, Resolution No. 2011-64 was taken out of order.

Mr. Nakamura: Council Chair, we're on page 5 of the council's agenda under Resolutions. This would be Resolution No. 2011-64.

RESOLUTION:

Resolution 2011-64, RESOLUTION REPEALING RESOLUTION NO. 2011-02, DRAFT 2 AND ADOPTING RULES OF THE COUNCIL OF THE COUNTY OF KAUAI FOR THE ORGANIZATION OF COMMITTEES AND THE TRANSACTION OF BUSINESS

Council Chair Furfaro: Thank you and I understand that Councilwoman Yukimura just shared with me that she has some amendments to introduce. So obviously I would be better off to run the meeting as we accept and circulate those amendments. But let me give you the floor for that purpose.

Ms. Yukimura: Thank you. Chair, we have before us the resolution adopting new rules that have gone through a committee process and we've gone over them several times. I believe we're ready for adoption of the resolution except for four amendments that we have proposed and I'd like to let Councilmember Nakamura introduce hers first, and then I have three pretty much housekeeping amendments to introduce as well.

Council Chair Furfaro: Okay, so before we go ahead further, can I then have a motion to approve the resolution.

Ms. Yukimura moved to adopt Resolution No. 2011-64, seconded by Mr. Bynum.

Council Chair Furfaro: Okay, now we're open to the introduction of amendments.

Ms. Nakamura: Thank you, we received a letter from the county attorney's office regarding rule no. 17 and Peter Morimoto helped me to prepare this amendment to rule no. 17 to address the concern raised by the county attorney. I believe this has been shared with the county attorney's office and that this version is now acceptable and meets legal guidelines.

Council Chair Furfaro: Okay, was that a motion?

Ms. Nakamura: So this is a motion to amend rule no. 17.

Council Chair Furfaro: Okay, may I have a second before we go any further?

Ms. Yukimura: Second.

Ms. Nakamura moved to amend Resolution No. 2011-64 as shown in the Floor Amendment amending Rule No. 17, attached hereto (see Attachment No. 1), seconded by Ms. Yukimura.

Council Chair Furfaro: Do we have copies for those people in the audience on rule 17? So would you go ahead and highlight those particulars in 17?

Ms. Nakamura: So the amendment is to subsection (a) and this is regarding restriction on employment of relatives. It now reads, "A public officer of the legislative branch of county government may not—this is the new section we're adding—participate in the decision to appoint, employ, promote or advance; or advocate for the appointment, employment, promotion, or advancement in or to an appointed, non-civil service position in the legislative branch of county government any individual who is his or her relative or domestic partner, or is a relative or a relative of a domestic partner of any public officer."

Council Chair Furfaro: Okay, any discussion with Councilwoman Nakamura on this? Mr. Bynum.

Mr. Bynum: Just a clarification that this would mean that you couldn't participate in any action related to any of these folks, but it doesn't mean that a relative couldn't work for the county, but just that the officer can't participate in that decision. Is that correct?

Ms. Nakamura: Yes.

Mr. Bynum: Thank you.

Council Chair Furfaro: Any further discussion? If not, is there public testimony? Seeing none, I guess we'll move to vote on this amendment to rule 17. It's been moved and seconded for approval. All those in favor, signify by saying aye.

The motion to amend Resolution No. 2011-64 as shown in the Floor Amendment amending Rule No. 17 was then put, and unanimously carried.

Council Chair Furfaro: Thank you very much. Hearing there's no noes, okay. Then we have the next, Councilwoman Yukimura.

Ms. Yukimura: So Mr. Chair, I'd like to move to amend as circulated, this is the floor amendment regarding section 6, that the resolution will take effect 30 days after its approval to give our staff time to adjust to some of the new agenda requirements, etcetera, such as the consent agenda and so forth.

Mr. Bynum: Second.

Ms. Yukimura moved to amend Resolution No. 2011-64, as amended herein, as shown in the Floor Amendment amending Section 6, attached hereto (see Attachment No. 2), seconded by Mr. Bynum.

Council Chair Furfaro: Okay, is there anyone in the audience that would like to speak to this floor amendment that indicates that the resolution on the rules will take effect 30 days after its approval. Seeing none, any further discussion amongst members? None. We have a motion and a second. All those in favor, signify by saying aye.

The motion to amend Resolution No. 2011-64 as shown in the Floor Amendment amending Section 6 was then put, and unanimously carried.

Council Chair Furfaro: Thank you very much. Council Vice Chair.

Ms. Yukimura: Yes, move to amend as circulated the sheet regarding rule no. 18, communication with county attorney. If someone will second it, I will explain it.

Mr. Bynum: Second.

Ms. Yukimura moved to amend Resolution No. 2011-64, as amended herein, as shown in the Floor Amendment amending Rule No. 18, attached hereto (see Attachment No. 3), seconded by Mr. Bynum.

Ms. Yukimura: Thank you. This is mainly to use the proper term of word of art, which is confidential communications, and I believe this was recommended by the county attorney as well.

Council Chair Furfaro: And we have a motion and a second. Is there anyone in the audience who wants to speak on this item? Seeing none, discussion amongst the members? Having none, may I ask that all those in favor, please indicate by saying aye.

The motion to amend Resolution No. 2011-64 as shown in the Floor Amendment amending Rule No. 18 was then put, and unanimously carried.

Council Chair Furfaro: Okay that's amendment no. 3. Vice Chair Yukimura.

Ms. Yukimura: Thank you. Move to amend as circulated the amendment regarding rule no. 15. And if there's a second, I'll explain afterwards.

Ms. Yukimura moved to amend Resolution No. 2011-64, as amended herein, as shown in the Floor Amendment amending Rule No. 15, attached hereto (see Attachment No. 4), seconded by Mr. Chang.

Ms. Yukimura: Thank you. Mr. Chair, may I?

Council Chair Furfaro: You have the floor.

Ms. Yukimura: This is regarding the consent calendar that is a new item in our rules. We inadvertently made it apply to committee meetings, but it really applies only to council meetings, and so that is the amendment. And I just wanted to clarify, too, that the consent calendar, when we get to that item (b) on the agenda, any councilmember can ask that an item be removed from the consent calendar for discussion later on in the agenda. And so a person from the public will be able to testify that such an item or any other item should be removed. So there will be a lot of opportunities for discussion. On the other hand, those that have no discussion on it will be allowed to be approved in the totality of the list and that should help us have more efficient meetings without sacrificing public input on the matter or discussion.

Mr. Rapozo: Mr. Chair?

Council Chair Furfaro: Yes, Mr. Rapozo.

Mr. Rapozo: I have some comments on the consent agenda. I totally support the idea of a consent agenda. However, after we had the last meeting and we had the discussion and I'm sure you all received emails from the public. I did. Some concerns about really why are we doing that? Are we trying to hide items in a bulk scenario, where we can just vote and try to eliminate? We all understand, clearly, I do that any councilmember has the opportunity to take it out and have the discussion. Obviously, if we don't know, unless the public mentions it, we won't have that opportunity because we won't know what they're interested in. I guess I question if it's pertaining to saving time, how much time are we really saving by...we kind of do that now, you know? Next item, 11, 12, 13, 14, 15, items to receive, items 11, 12, 13, 14, 15, move to receive, second, that's sort of like what a consent agenda does. I think my concern, after reading and I wish I remembered his name I have the email on my desk, he made some really valid points about why are we doing this and, in fact, it really doesn't save much time. The byproduct is you get this perception from the public that in fact we don't want to discuss items, which is not true, obviously. But it does make it a lot simpler, the consent agenda or the consent calendar. So I just want to have that discussion that in fact...I was going to prepare an amendment to remove the reference to the consent calendar. I just want to have that discussion and hear from you guys one more time. I don't think it saves that much time. It doesn't save that much time because we're going down the list anyway. And if it hurts the perception or if it causes a negative perception, then why would we want to do it? If we could just have that discussion and if there is a consensus, I will go ahead and introduce the amendment to remove the reference to the consent agenda.

Council Chair Furfaro: Okay, Vice Chair Yukimura, then Mr. Bynum.

Ms. Yukimura: Maybe I misspoke by actually trying to clarify it because I knew there were objections. Actually, probably the proper place is to speak after this amendment is made because it's already part of the regular resolution, but if the chair wants to have discussion on the consent calendar right now, I think the negative perceptions could be dispelled. That's what I was trying to do in explaining how it worked. How much time it will save? I don't know. We're trying a lot of these ideas. I believe the consent calendar was proposed by Mr. Taylor as an example of other jurisdictions using it. And so we even went as far as doing a sample consent calendar. I think there are enough safeguards to assure that if any member of the public wants to speak on something, we can take it off because they'll have a chance to say so before we approve the consent calendar, before we even approve the total agenda. And I think it's worth a try, but if we don't want to try something new like this, the majority of the council doesn't want to try it then, Councilmember Rapozo, you should have an amendment prepared.

Mr. Rapozo: Oh yeah, I'm just going to have...I wanted to have the discussion. For me I think the consent calendar is a good thing, I do, but I think after reading some of the emails from...realizing Mr. Taylor supports it, but there are other constituents that don't and they feel a little hesitant. Basically, whatever the council wants to do, I think if you set up a consent calendar and someone comes up and wants to speak on one of the items, it's going to take time to pull it out and then adjust your consent calendar so you can accommodate the request. It's going to take time if you want to go and deviate from the consent calendar. So either way, I don't think time should be the justification and I don't see any other justification really to do it because I think the way we do it here, I appreciate the way we do it here. I think the community appreciates it because we go through



each item one by one, although we bulk it all up on the ones that we know typically would end up on a consent agenda. So, I'd like to hear from the rest of you because there's no sense wasting time on an amendment.

Council Chair Furfaro: Okay, Mr. Bynum, you have the floor.

Mr. Bynum: Well, I did read the correspondence of people concerned and I think the key word in your comments is "perception." And I first became aware of this when I was researching the Granicus system that we purchased. And I looked at probably 50 agendas in different communities all over the country and it was very common to see this consent calendar. So then I followed up with questions with a couple of jurisdictions and they said this is about efficiency, it saves time. My own view is that it could, on some agendas, save 20 or 30 minutes, and I value the time with my colleagues in more substantive discussion. So I think it's worth a try. I know no one's intention here is to try to slip something in and we'll get called on it anyway, for sure by Mr. Taylor and I appreciate that. So I'd like to see it stay.

Council Chair Furfaro: Okay, members, if you don't mind I'm going to suspend the rules. Mr. Taylor, you want to come up and speak?

There being no objection, the rules were suspended.

KEN TAYLOR: Chair and Members of the Council, my name is Ken Taylor.

Council Chair Furfaro: Your mike may not be on, Ken.

Mr. Taylor: Chair and Members of the Council, my name is Ken Taylor. Although we didn't get a copy of that explanation of the consent calendar issue, I have no problem per se with a consent calendar, but I do have a problem with the way it's been worded in the past anyway. That it should allow the council or a public member to pull an item from that list under the consent calendar. I would like to remind each of you under the current situation where you sometimes bundle up into items 1 2 3 4, yes/no vote, the public can certainly request to speak on one of those items. And so when it's all bundled under the consent calendar, I think the public should be able to have that same...in fact I think by law you have to allow anything that's on the agenda to be discussed by the public. So I'm in favor of the consent calendar. I think in the long run, on many occasions it will save you some time. Very seldom, the kinds of items that normally would be considered under the consent calendar is there ever anybody here to speak on any of them, very seldom. And so I just don't see any particular reason and as far as concern, again, if we get to a point where agenda items are complete with documentation or the paperwork behind them available on the Internet or at the front desk, which should be, whether it's on the consent calendar or not, the documentation activity needs to be available to the public so there should be no reason for concern. And I think if there is concern out there and I've heard from some people that have raised concerns and after I've talked to them about the process as I see it functioning, most of their concerns go away because it's a sensible thing to do and as long as we're entitled to the information available, and I would say hopefully as we move forward and go into something like this, that we would have a better description...

Mr. Nakamura: Three minutes, Mr. Chair.

Mr. Taylor: ...of the action, activity, so that it's better understood and that there is no doubt in the public's mind as to what is transpiring. As I say I'm in favor of the consent calendar. I would like to see you change it so that both yourselves and the public can pull an item from the consent calendar. Thank you.

Council Chair Furfaro: Thank you. Mr. Mickens, did you want to testify on this item?

(Inaudible.)

Council Chair Furfaro: Oh okay, I can go back to that. Were there any questions of Mr. Taylor? No? Okay, 13(e). Glenn, please come right up. Did I get that right, 13(e) like in eggplant?

GLENN MICKENS: Yes, thank you, Jay, for the record Glenn Mickens. Regarding the consent calendar, I just want to say I completely agree with Ken. I think anybody should have the right to go ahead and pull an item off the thing. If it's on the agenda, I mean by sunshine law I believe you're entitled to speak on it anyway. I still have a serious concern about rule 13(e), which are about members of the public being able to speak on any "agenda item." As the public testified at the committee meeting and as this procedure is done in other municipalities, it should say, "on any government item," in my opinion. If it's an agenda item the public already has 3 or 6 minutes to talk about it under the sunshine law. But how about an item that has been for maybe years not been talked about? Maybe the public is concerned, such as the landfill, ongoing for 20 years, and we still have no resolution. The shrimp farm 2 or 3 years, our roads 17 years, JoAnn's thing about the lights at the park having an automatic meter, shutting off. We have no resolutions to these.

Obviously, nothing can be done at that stage of the game. You won't have the right to address the public or anything, but just the fact that we're bringing it up again and maybe as a reminder to the council or to the general public as to what's going on with these things? So that's my only concern about saying rather than...that the public should have the right to be able to bring up not just any item. I'm not saying that some guy wants to talk about outer space or something, but any government item on the thing, I think, would be a legitimate item to bring up, okay?

Council Chair Furfaro: So let me understand this, Glenn. This piece indicates that for that week, you could speak on any agenda item?

Mr. Mickens: Exactly.

Council Chair Furfaro: What you are saying is for 17 years you could speak every week on roads?

Mr. Mickens: Yeah.

Council Chair Furfaro: That's how I just interpreted what you said.

Mr. Mickens: Well no. If it has never been resolved, the issue is ongoing, never resolved, nobody brought it to a resolution, I think that the public then should have the right to come up here and say, you know, I'm still interested in why the lights aren't being turned off down here at the park? Every night I go by it and nobody's on that softball field. The lights are on. Why? Why are we wasting the energy at this stage of the game?

Council Chair Furfaro: I just want to say that I have tried to and will continue to put high priority items that have substantial citizens' dialogue on the agenda. I think I've demonstrated that for the last six months.

Mr. Mickens: You've done a great job, right.

Council Chair Furfaro: I'm not asking for that. I'm just saying to have the possibility for someone every week to come and talk about a government item over and over and over, I think there needs to be a little faith on our side because to me, we would want those people that know there is something on this week's agenda to have the priority for time over people that just want to visit a government item.

Mr. Mickens: Sure.

Council Chair Furfaro: And I'm just pointing that out as something that I'm having difficulty with and I will continue to try and be flexible. Mr. Bynum had a question, I believe. (Inaudible) Mr. Bynum?

Mr. Bynum: I really mulled this over because I asked OIP and discovered there already was an OIP opinion that says, yeah, we could do this. But the opinion also says that councilmembers could not respond. And so I think that puts us at kind of a disadvantage and then how do you define a "government item?" Maybe during election somebody wants to come up and speak about their favorite national candidate for President every week because they get three minutes of air time. And so we're here to do the agenda and business that is before us. I think this is a great accommodation that we're trying to give people to make sure that they can speak on an item if they can't wait for it to come up on the agenda. I hear you and I'd like to do that, but I think it would open up a lot of cans of worms. And you have seven really good councilmembers here and anybody in this community that has an issue, I think, has a responsive councilmember that they can go to and a responsive chair that will put it on for public discussion if it's warranted. So I just can't go with you on this one. I think we're moving. We've made some really good changes to be more responsive to the public. And I've said before, when I looked at these 50 other municipalities, we have the most generous public testimony rules that I know of anywhere. You look at some cities, it's 2 minutes right now at the front of the agenda and the citizens know because you see them doing their testimony, blah, blah, blah and stop mid-sentence because they know they're not going to get 2 minutes and 5 seconds. You know Kaipo was very generous. Our new chair is very generous with time and I think we have a good rule here.

Mr. Mickens: Even if it was at the discretion of the chair, as you said, if somebody is going to sit here week after week after week that wasn't anywhere in my thought process of bringing something up week after week after week. Only if it's something that hasn't been taken care of in three years, four years or five years, and you want to throw it out. You say you're at a disadvantage to not be able to not respond. Well, if we're bringing it up, it's not for asking for a response necessarily. It's only as a matter of bringing it up.

Mr. Bynum: Can you see, Glenn? Let me put this in a question. Can you see how it could cause some difficulties for the council? Can you see how it could put us at a disadvantage? What if a citizen comes up and says, you know, Councilmember Chang, you said this and you did this and I disagree, and he can't speak to it because it's not on the agenda. That's not going to be fair. I'm sorry for using you as an example. I think we gave a lot of thought to this one and we're making this step. Maybe next time around we'll be willing to...

Council Chair Furfaro: Okay and Glenn, I only brought that up as a repetitive item. Roads has gotten a lot of attention, but we can't do roads every week and then find ourselves, as a non-posted item, not being able to respond to a question. So I think it should be the agenda items for the week.

Mr. Mickens: Well the roads basically were a once a year item, where you had to approve the resurfacing thing and then it stopped coming up. It wasn't even on the agenda. So in that instance, I thought, hey, we could go ahead and respond to it, bring it up, find out what's going on with it. But I understand what Tim's saying that it could be abused, but again, maybe at your discretion, as the chair, you say we've done this and we don't want to hear any more about it.

Council Chair Furfaro: Well hopefully when you and I meet with the engineering department, of which I promised you, new and quality questions and concerns come up, we actually post it on the agenda. So I'll keep you posted on when I can get together with Mr. Dill.

Mr. Mickens: Okay, thank you, Jay.

Council Chair Furfaro: Thank you. Okay, I'm going to call the meeting back to order.

There being no one else wishing to speak on this matter, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: Council Vice Chair.

Ms. Yukimura: Yes, so I think we have the last amendment before us, Chair, and there was a motion and second. So I don't know if we have anymore discussion, but it's mainly just clarifying that the consent calendar is for council meetings, not committee meetings.

Council Chair Furfaro: Okay, all those in favor, signify by saying aye.

The motion to amend Resolution No. 2011-64, as amended herein, as shown by the Floor Amendment amending Rule No. 15, was then put, and unanimously carried.

Council Chair Furfaro: Okay very good. I guess we'll go to the main motion.

Ms. Yukimura: Yes, as amended.

Council Chair Furfaro: And it is the main motion as amended with four amendments?

Ms. Yukimura: Yes.

Council Chair Furfaro: Okay. Am I correct, four, right? Okay and Vice Chair Yukimura, I'll let you take it from here.

Ms. Yukimura: Well, Chair, I want to thank you first of all for putting this agenda before us, creating the subcommittee, which I was happy to chair, and I want to thank all the members, Councilmember Nakamura and then Councilmember Derek Kawakami. I want to thank the Committee of the Whole because that is what it came through. I want to thank the public who are here and

I guess there may be some public testimony on the resolution as amended. But I think we're very, very close, if not there, and I hope that these rules that we are adopting will facilitate good meetings. I certainly appreciate your leadership...

Council Chair Furfaro: Thank you.

Ms. Yukimura: ...in setting up the framework so that we could address these rules. Thank you very much.

Council Chair Furfaro: Okay, I am going to ask for public comment on the entire resolution as amended. The rules are suspended. Ken, did you want to come up and now we're talking on the overall rule change.

There being no objection, the rules were suspended.

KEN TAYLOR: Chair and Members of Council, my name is Ken Taylor. I, too, have a real problem with the way you're going forward with public comment, rule 13(e). I think it's wrong to not allow the public to raise concerns or issues that are of interest to them that are not on the agenda. I've spent many years in government activities where they had public comment. There was very seldom a problem. It wasn't abused when you bring it down to a situation of discussion of government rules that you are involved in dealing with, not federal government, not state government, but county government issues. I think it's totally wrong that you would not allow the public to participate in this manner. We originally suggested 15 minutes of your time and I don't know why it was changed to 18 minutes as it's written here. But I think that if you want to allow the public to talk about issues on the agenda at the beginning of the meeting, that should be one option, but I do strongly believe that the community should have this opportunity and I know I've said this before and made some of you unhappy, but I believe that the way this is going, you are not fulfilling your ethical/moral obligation to the community under open government process. And I will leave it at that, and I am really sorry that you're not taking the opportunity to do what's right for the community in general. So I guess I should say thank you for what we have. It's not much, but those are my thoughts.

Mr. Nakamura: Three minutes, Mr. Chair.

Council Chair Furfaro: Let me see if there are any questions for you, Ken. Ken, I indicated if there were any questions for you from members. Are there any questions for Ken? No? And thank you for your comments. Mr. Mickens, did you want to speak on the overall? No? Okay, I call the meeting back to order.

There being no one else wishing to speak on this matter, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: Mr. Bynum?

Mr. Bynum: I just really want to echo what Councilmember Yukimura said and thank the subcommittee and the council chair and I wanted us to have a look at our rules for some time and we've done that. I don't think it's perfect. There are things I would have done differently, but that's the democratic process. I think we're doing some significant things here to make us more accountable, to increase public involvement, and I also want to acknowledge Linda Harmon, who I talked with a lot about this over the last couple of years and

her input and Ken and Glenn, who really have been there and helped shape this in a better way, I think. I wish, Ken, you were more happy with some of the changes as I am, but we'll keep plugging away.

Council Chair Furfaro: Thank you, any other members want to speak?  
Mr. Rapozo?

Mr. Rapozo: I'll be supporting the resolution. Obviously, I disagree with some of the items, but I think overall it's a good resolution. I do want to say that I'm concerned about the open speaking in the beginning simply because we're limiting it to 18 minutes. What happens if 10 people show up? This basically limits the time to allow the public to speak. You know this council, this is now my seventh year and I have yet to see a situation where a member of the public was not allowed to speak. In fact, we saw it today. We moved around quite a bit of items to accommodate speakers, members of the public who couldn't stay the whole day for whatever reason. So I think it's really unnecessary, but again, I'm going to support it. I just think we're going to run into problems. There will be a day that there are more people than 18 minutes will allow. And I understand that the discretion of the chair can always change it and that's why I question the real necessity of the section. If we're going to put it in, it's there for a reason. But if we're going to put it in and the chair's prerogative can go, okay, you can go four minutes or five minutes, you can go six minutes, it's going to be difficult, I think because there's going to be that person that comes up in the morning and has to go to work and that person will have three minutes to speak on an item and anyone else will have six minutes. So I think there are some issues that penalize the person that cannot stay all day like Mr. Mickens and Mr. Taylor. Yeah, you come in the morning, but you only get three minutes. So I see it as a fairness issue, but again, we'll see how it works. It can be changed relatively quickly. I don't anticipate much problems, but I guess for me, when it's in the rule, I'm the black-and-white guy. When we have a rule and it gets bent for certain people, then the inconsistency causes the perception of unfairness. And that is all I'm concerned about. If we're going to put 18 minutes, but it's subject to change, then we really don't need the rule. We have a very fair chair. I don't anticipate any problems. But with the rule now, I think you put the pressure on the chair to have to bend the rule or use his discretion because of a limit we set arbitrarily, 18 minutes, 15 minutes, whatever it is. How do you know? I mean it should be just we'll give the people time before the meeting because remember if they speak before the meeting, they give up their right to speak later. So you either do it now or do it later. But to cap it at 18 minutes, I think I have a concern with that, but we'll see how it goes.

Council Chair Furfaro: Mr. Rapozo, may I ask you to repeat that one more time? If you choose to speak in the morning, would you repeat that one more time?

Mr. Rapozo: Yeah, yeah, yeah, it's clear that if you choose to use this route, you get three minutes and you cannot speak again. It's almost punitive if you come early, and again, I think there are a lot of people that don't come because they cannot sit here for five or six or seven hour, but if they knew they could come up in the morning and speak, they'll come.

Council Chair Furfaro: That's the intent.

Mr. Rapozo: But if 18 minutes is the cap?

Mr. Kualii: They have to get here early.

Mr. Rapozo: It's like a lottery, the first six will get it and after that, sorry. Then they've wasted a trip. I don't see the need to have a number because again you put yourself in a box that the chair is going to have to exercise discretion and again, then it's, well, last week you let 20 people or 15 people or 6 people or 8 people. Last week you let somebody go 6 minutes and that's the reason for the rule is to make it easy for this body to conduct its business. My opinion, like I said, I'm willing to support it to see how it works, but I just want to make it as painless for this body and for the public as possible. Thank you.

Council Chair Furfaro: Thank you, Mr. Rapozo. Council Vice Chair, let me see if there's any other commentary. If not...

Mr. Kualii: Is this on everything?

Council Chair Furfaro: This is on the whole rules, yes. I can go to Council Vice Chair Yukimura and come back to you, if you want to give it some thought. Council Vice Chair.

Ms. Yukimura: Thank you because I do want to try to respond to Councilmember Rapozo's concerns. It's exactly Councilmember Rapozo's concerns that would not have me vote or support time to talk about anything on the agenda because we may have to expand this 18-minute period for items on the agenda. This is really a trial. The difference about this 18 minutes is that we're not going subject by subject where we get to actually look at all of the subject matter. We're going to just have everybody come and speak on whichever item they want to speak on and that's a difference and that's what we want to herald by this new format. And we don't know how it will all work out. But it is saying that you have the privilege of not having to wait and you can come and speak upfront. But for the whole reason that we need to keep the meeting moving, we are trying this on a limited basis, both in terms of individual limits and overall limits. And we can change it as we see how it works or doesn't work. And I mean, I felt badly today having Mr. McCormick, who is so, so busy wait for half a day at least to give his input. So we already have a lot of waiting going on. We have very important topics that we are responsible to deal with and dispose of. I think we have an obligation to the public to deal with these matters in the best way possible as thoroughly as possible and so I think we need to focus on the agenda at hand. And there may be certain citizens who are very respectful and only come in and talk when they feel it's important, but there'll be others who come and talk to hear themselves talk and we have to keep focused on what our business is. And as Councilmember Bynum pointed out, if there is a critical issue that any member of the public is concerned about, there are seven councilmembers who are very serious about doing their job. And with proper preparation of an item, we'll get it on the agenda so that people will have a chance to speak about it in a way that is conducive to good problem-solving. So I think we need to move carefully and I think these rules do that and I'm sure there'll be further changes as we find out how they work or don't work.

Council Chair Furfaro: Thank you, Vice Chair, Councilmember Kualii, did you want to have the floor?

Mr. Kualii: So unfortunately I'm coming in late to the process and I was reading through the minutes of the last discussions on this, and it was Councilmember Kualii excused, so I wasn't here. The main one—I'm not sure I understand this—with rule no. 6, regarding the motion to receive. And so a motion to receive in the full council means one thing, but the motion to receive in the committee means something else. And in reading these minutes, it says, "motion to receive that was made in a committee meeting would be treated as a motion to



recommend receipt of the matter to the council.” But in the language it says basically “the motion to receive, if made during a committee meeting, shall be considered a motion to recommend to the council.” So it’s to recommend receipt?

Council Chair Furfaro: Yes.

Mr. Kualii: Is that understood because it doesn’t say that. I thought maybe recommend means...

Council Chair Furfaro: I’ll bring up the clerk and have us visit that in a moment.

Mr. Kualii: Okay, that was my only question.

Council Chair Furfaro: Any more comments before I bring the clerk up? Mr. Nakamura, are you able to come up so we can address that piece? Mr. Nakamura, did you want to go up?

Mr. Kualii: Rule no. 6, page 13.

There being no objection, the rules were suspended.

Council Chair Furfaro: Mr. Clerk, we’re dealing with item rule no. 6.

PETER NAKAMURA, County Clerk: Thank you, Council Chair, Peter Nakamura, county clerk for the record. Councilmember Kualii was speaking to rule no. 6, and the difference between what happens on the motion of receipt between the council and the committee meetings, I’m kind of having a sense of déjà vu on this one, Council Chair. I believe at the previous, I think at the previous committee of the whole meeting, I think it was, when this discussion last occurred, basically, I’m trying to recall but I want to be consistent, was that the understanding that I have is that committees basically make a recommendation to the council. And that’s why the motion to receive at the committee level would be a recommendation to the full council. I know there was substantial discussion on that point, but that was the basic point that I remember making at the previous committee of the whole meeting, Mr. Chair.

Council Chair Furfaro: Okay. I have a question being posed by Vice Chair Yukimura.

Ms. Yukimura: Well, I have the same memory, and I think it was a policy decision that we made that we didn’t feel that a matter should die in committee and that we should be able to...that the stoppage of a bill or an item needs to be done by the council as a whole.

Mr. Nakamura: I believe Vice Chair Yukimura is on target. There was a larger debate around that that enveloped that particular discussion.

Council Chair Furfaro: Any more questions of the clerk? If not I’m going to give the floor back to Councilmember Kualii.

There being no further questions, the meeting was called back to order, and proceeded as follows:



Mr. Kualii: Perhaps maybe my confusion is just I have a lot to learn about Robert's Rules of Order, but it's the same motion but it means two different things in two different instances, and there are other motions as well, right? There are motions to postpone or to postpone indefinitely. So does that mean the motion to postpone indefinitely, which would mean no action can be taken and it would be disposed of for the calendar year, does that mean that is not allowed in committee or is it still allowed because it's not killed forever but it's killed for a long period of time? If you do it at the beginning of the year that means it's for a year, which our terms are only two years.

Council Chair Furfaro: Council Vice Chair Yukimura.

Ms. Yukimura: That is what it means that you could actually postpone it in committee for a long time and if that is something we don't wish to do and we feel the council should do, then we should amend our rules accordingly. But right now, there's a policy statement intended or unintended that a bill could be deferred for a calendar year in committee, but it cannot be killed in committee.

Mr. Kualii: Thank you, Mr. Chair.

Council Chair Furfaro: You're quite welcome. Council Vice Chair Yukimura.

Ms. Yukimura: I actually think there's also a Robert's Rules that allows the council to pull it out of committee if there's an urgent matter and you have a recalcitrant committee or something and you have enough votes on the larger council to pull it out. Those are kind of extraordinary measures, but there are those measures available in the whole rubric of rules.

Council Chair Furfaro: They do exist. Any further discussion before I call for the vote? This will be a voice vote? Roll call? Yes. I'm sorry, that's what I meant, my voice is my voice, identified by individual councilmembers.

Mr. Nakamura: Mr. Chair, we're on resolution 2011-64 as amended.

The motion to adopt Resolution No. 2011-64, as amended, was then put, and carried by the following vote:

FOR ADOPTION: Bynum, Chang, Kualii, Nakamura, Rapozo,	TOTAL - 7,
Yukimura, Furfaro	
AGAINST ADOPTION: None	TOTAL - 0,
EXCUSED & NOT VOTING: None	TOTAL - 0.

Mr. Nakamura: Seven ayes, Mr. Chair.

Council Chair Furfaro: And I want to take the time to thank Vice Chair Yukimura for leading the committee, the committee members, also the staff. Mr. Morimoto was very actively involved with this, and Peter, I don't know if you're writing the accommodations down or you're just shy, but thank you very much. Thank you to the whole staff.

Ms. Yukimura: Mr. Chair, I want to give my personal thanks to Peter Morimoto too. You'll note, he even put the table of contents in on the rules, so that's just an indication of his work and follow-up. Thank you very much, Peter.

Council Chair Furfaro: Outstanding, thank you. Okay, gentlemen, we're going to move to the next item. I changed the arrangements today because you're the last two in the gallery. Mr. Mickens, obviously, we'll know when you testify early in the morning that means there's a Dodgers game on. So we'll go to the next item.

Mr. Nakamura: Mr. Chair, we're back on page 1 of the council's agenda on communications for receipt, communication C 2011-197 and communication C 2011-198.

#### COMMUNICATIONS:

C 2011-197 Communication (05/27/2011) from the Director of Finance, transmitting for Council information, the Period 10 Financial Reports – Statement of Revenues as of April 30, 2011, for Fiscal Year 2011, including the Statement of Revenues (Estimated and Actual), Revenue Report, Statement of Expenditures and Encumbrances, and Detailed Budget Report, pursuant to Section 21 of the Operating Budget Ordinance (B-2010-705), County of Kaua'i: Mr. Chang moved to receive C 2011-197 for the record, seconded by Mr. Rapozo, and unanimously carried.

C 2011-198 Communication (06/03/2011) from the Chief of the Building Division, Department of Public Works, transmitting for Council information, the Monthly Report on Building Permit Information for May 2011 which includes the following:

- (1) Building Permit Processing Report
- (2) Building Permit Estimated Value Summary
- (3) Building Permits Tracking Report
- (4) Building Permits Status

Mr. Chang moved to receive C 2011-198 for the record, seconded by Mr. Rapozo, and unanimously carried.

Council Chair Furfaro: Thank you.

Mr. Nakamura: We're on page 2 of the council's agenda, Council Chair, on communication for approval. We're on communication 2011-202.

C 2011-202 Communication (06/01/2011) from the Chief of Police, requesting Council approval to accept, expend and indemnify the Hawai'i Narcotics Task Force (HNTF) Contract through the State of Hawai'i, Department of the Attorney General, in the amount of \$16,887.00 to combat the distribution of illegal narcotics. The project period for this grant is from April 1, 2011 to August 31, 2011 and will be funded recurrently on an annual basis: Mr. Chang moved to approve C 2011-201, seconded by Ms. Yukimura, and unanimously carried.

Council Chair Furfaro: Next item.

Mr. Nakamura: At the bottom of page 2, Council Chair, on a communication for approval, communication C 2011-203.

C 2011-203 Communication (06/13/2011) from the Prosecuting Attorney, requesting Council approval of the following:

(1) To apply for, receive and expend state funds from the Career Criminal Prosecution Program Grant in the amount of \$61,938.00 for the continuation of the Kaua'i Career Criminal Prosecution Program, for the term July 1, 2011 through June 30, 2012, to fund the program's staff salaries and wages; and

(2) To indemnify the State of Hawai'i, Department of the Attorney General.

Mr. Chang moved to approve C 2011-203, seconded by Mr. Rapozo, and unanimously carried.

Mr. Nakamura: Council Chair at the top of page 3 another communication for approval, which is communication C 2011-204.

C 2011-204 Communication (06/13/2011) from the Prosecuting Attorney, requesting Council approval of the following:

(1) To apply for, receive, and expend federal funds from the Crime Victim Assistance Grant in the amount of \$191,417.00 for the Kaua'i Victim Of Crime Act (VOCA) Expansion Program, for the term commencing August 1, 2011, to fund the program's salaries, fringe, and operational expenses; and

(2) To indemnify the State of Hawai'i, Department of the Attorney General.

Mr. Bynum: Move to approve.

Mr. Kualii: Mr. Chair?

Council Chair Furfaro: Yes, on this note and for the next item, I'd like to give you the floor, Mr. Kualii.

Mr. Kualii: Thank you, Mr. Chair. I have provided written disclosure of a possible conflict of interest relating to those two matters. I'm recusing myself from deliberations on these two matters due to my employment with the YWCA.

Council Chair Furfaro: Okay, we'll give you a moment to leave the chambers and then I'll go back and recognize Mr. Bynum.

Mr. Bynum: Sorry.

Council Chair Furfaro: No problem.

Mr. Kualii was recused from items C 2011-204 and C 2011-205, and noted absent at 4:42 p.m.

Council Chair Furfaro: Okay, Mr. Bynum.

Mr. Bynum moved to approve C 2011-204, seconded by Ms. Yukimura, and unanimously carried (Councilmember Kualii recused).

Council Chair Furfaro: Thank you very much. Mr. Clerk, next item please?

Mr. Nakamura: Next matter for approval is communication C 2011-205.

C 2011-205 Communication (06/13/2011) from the Prosecuting Attorney, requesting Council approval of the following:

- (1) To apply for, receive, and expend state funds from the Victim Witness Assistance Program Grant in the amount of \$20,186.00 for the continuation of the Kaua'i Victim Witness Program, for the term July 1, 2011 through June 30, 2012, to fund the Victim Witness Clerk's salary and wage; and
- (2) To indemnify the State of Hawai'i, Department of the Attorney General.

Mr. Rapozo moved to approve C 2011-205, seconded by Mr. Chang, and unanimously carried (Councilmember Kualii recused).

Council Chair Furfaro: Thank you. May I ask the council staff to recall Mr. Kualii.

Mr. Kualii was noted present at 4:43 p.m.

Council Chair Furfaro: And on that item, we'll go to 2011-206, Mr. Clerk.

Mr. Nakamura: Council Chair, next matter for approval is communication C 2011-206.

C 2011-206 Communication (06/13/2011) from the Chief of Police, requesting Council approval to accept and utilize adult crossing guard equipment (15 yellow raincoats with "Crossing Guard" logo, 15 Crossing Guard reflective vests, and 15 Crossing Guard signs) purchased by "Get Fit Kaua'i" through a grant from the CDC (Centers for Disease Control and Prevention) – Communities Putting Prevention to Work and donated to the Adult Crossing Guard Program.

Ms. Yukimura: Move to approve.

Mr. Chang: Second.

Council Chair Furfaro: Thank you.

Mr. Bynum: With an appropriate letter for the gift from Get Fit Kaua'i and the Centers for Disease Control.

Council Chair Furfaro: So noted. Council Vice Chair Yukimura?

Ms. Yukimura moved to approve C 2011-206 with a thank-you letter, seconded by Mr. Chang.

Ms. Yukimura: Yes, this is a wonderful demonstration of how Get Fit Kaua'i is paying attention to details, as well as to the big picture of safe routes to school.

Council Chair Furfaro: Thank you.

Ms. Yukimura: And we're grateful to them. Thank you.

Council Chair Furfaro: Any further discussion? If not all those in favor, please say aye?

The motion to approve C 2011-206 with a thank-you letter to follow was then put, and unanimously carried.

Council Chair Furfaro: Next item, Mr. Clerk.

Mr. Nakamura: Next matter for approval is communication C-2011-207.

C 2011-207 Communication (06/13/2011) from the Director of Housing, requesting Council approval for the leasehold sale of the property situated at 3868 Olona Street, Kōloa, Hawai'i 96756, TMK (4) 2-8-025-053, at an affordable leasehold sales price based on a leasehold appraisal received for \$155,000.00, and that the County Clerk be authorized to sign all documents related to the sale of this property: Mr. Kuali'i moved to approve C 2011-207, seconded by Ms. Yukimura.

Council Chair Furfaro: Thank you. Any discussion?

Ms. Yukimura: Yes.

Council Chair Furfaro: Mr. Bynum. Council Vice Chair Yukimura, you can have the floor first.

Ms. Yukimura: Thank you, I just wanted to say that this leasehold sale is part of a very important county program to make houses available at an affordable price to deserving and qualified families. It's affordable in two ways. One, a leasehold at \$155,000 is something that a family can afford, but two, it's also affordable in perpetuity because the county will keep the fee and this will keep going if the family that gets it now wants to move or sell, they will be able to move, but the resale will be to another qualified family and not into the open market, where in Koloa/Po'ipū, it would be unaffordable for most families. So it's actually one of the real effective ways of providing affordable housing for generations.

Council Chair Furfaro: Thank you, Vice Chair, and thank you for your work in this committee. Any further discussion? Mr. Bynum.

Mr. Bynum: Just to add to that. We have this great housing agency that's working hard with federal dollars and with creativity to try to provide affordable housing to people on Kaua'i. We're in real difficult economic times, but it also presents some opportunities that may not come again in terms of affordability. They have classes that my daughter is currently attending as a young adult about how to make sure your finances are in order and that you can get mortgage-ready and qualified. There's this great staff out there that's looking for opportunities for people here on Kaua'i. So it would really behoove, especially young families to consider attending one of those classes because these opportunities come along. Look at this opportunity to own a leasehold home for \$155,000.

Council Chair Furfaro: Thank you. Council Vice Chair.

Ms. Yukimura: I want to acknowledge Ken Rainforth, former head of the housing agency, because both the program that...what is it called? The home-buyer program that trains young families in finances and getting qualified for mortgages, as well as the leasehold sale program, really started under his

leadership. And I also want to thank the present housing agency employees who are following up and continuing this program in a way that's really setting a foundation for housing on Kaua'i.

Council Chair Furfaro: Thank you, any further discussion? If not, all those in favor to approve?

The motion to approve C 2011-207 was then put, and unanimously carried.

Council Chair Furfaro: Thank you very much. Mr. Clerk, next item.

Mr. Nakamura: Next matter for approval is communication C 2011-208.

C 2011-208 Communication (06/20/2011) from the Prosecuting Attorney, requesting Council approval to apply for, receive and expend funds from the Office of Victims of Crime and the Maryland Crime Victims' Resource Center, Inc., in the amount of \$30,000.00 for the Project Kaua'i Identity Theft Coalition, for the period October 1, 2011 to September 30, 2012, to create a coalition to educate the community on identify theft, to hold public awareness campaigns, to establish a victim hotline, and to provide reading material for the public: Mr. Rapozo moved to approve C 2011-208, seconded by Ms. Yukimura, and unanimously carried.

Council Chair Furfaro: Thank you, we will go to page 4.

Mr. Nakamura: On a communication for approval on the top of page 4, communication C-2011-209.

C 2011-209 Communication (06/21/2011) from the Director of Housing, requesting Council approval to decline the repurchase of Unit No. 56, Villas at Puali, located at 1985 Haleukana Street, Lihu'e, Hawai'i 96766, TMK 4-3-3-003-039-056, and to grant the owner a one-year waiver of the buyback, thus permitting the market sale of the unit by the owner for a period of one year: Mr. Rapozo moved to approve C 2011-209, seconded by Ms. Yukimura, and unanimously carried.

Council Chair Furfaro: Okay, we'll go into legal documents now.

Mr. Nakamura: Next matter for approval is a legal document, communication C 2011-210.

#### LEGAL DOCUMENT:

C 2011-210 Communication (05/23/2011) from the Executive on Transportation, transmitting for Council consideration and approval, the following from Kaua'i Christian Academy:

- Right-of-Entry Agreement granting the County entry to the premises situated at 4000 Kilauea Road, Kilauea, Hawai'i 96754, being TMK: 5-2-004:102 Unit 6, to allow the Kaua'i Bus to pick up and drop off passengers.
- To indemnify Kaua'i Christian Academy.

Mr. Rapozo moved to approve the legal document attached to communication C 2011-210, seconded by Mr. Kuali'i.

Council Chair Furfaro: Thank you. And again, this is for the purposes of letting us have an access to Christian Academy for bus service. Any further discussion? If not, all those in favor say aye.

The motion to approve the legal document attached to communication C 2011-210 was then put, and unanimously carried.

Council Chair Furfaro: Thank you very much. We'll move to claims now.

Mr. Nakamura: Next matters are three claims, Council Chair, communication C 2011-211 which is a claim filed against the County of Kaua'i by Avis Rent-a-Car, C 2011-212 which is a claim filed against the County by Annalia Russell, and communication C 2011-213 which is a claim filed against the County by State Farm Insurance as subrogee for Clayton Cataluna.

#### CLAIMS:

C 2011-211 Communication (06/13/2011) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Avis Rent-A-Car for damages to their vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kualii moved to refer C 2011-211 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Ms. Yukimura, and unanimously carried.

C 2011-212 Communication (06/14/2011) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Annalia Russell for damage to her personal property, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kualii moved to refer C 2011-212 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Ms. Yukimura, and unanimously carried.

C 2011-213 Communication (06/23/2011) from the County Clerk, transmitting a claim filed against the County of Kaua'i by State Farm Insurance as subrogee for Clayton Cataluna for damage to his vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kualii moved to refer C 2011-213 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Ms. Yukimura, and unanimously carried.

Council Chair Furfaro: Okay, let's go to Committee Reports.

Mr. Nakamura: Next matters are committee reports for approval, from your Committee on Economic Development & Renewable Energy Strategies, Committee Report No. CR-EDR 2011-05.

#### COMMITTEE REPORTS:

#### ECONOMIC DEVELOPMENT & RENEWABLE ENERGY STRATEGIES COMMITTEE REPORT

A report (No. CR-EDR 2011-05) submitted by the Economic Development & Renewable Energy Strategies Committee, recommending that the following be approved as amended on seconded and final reading:

"Bill No. 2399, Draft 1 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 23, OF THE KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE REGULATION OF BUSINESS AND TRADES,"

Mr. Chang moved for approval of the report, seconded by Ms. Yukimura, and unanimously carried. (*See later for Bill No. 2399, Draft 2*)

Council Chair Furfaro: Thank you, next.

Mr. Nakamura: The last committee report for approval on the top of page 5 from your Finance/Parks & Recreation/Public Works Programs Committee, committee report CR-FPP 2011-05.

**FINANCE / PARKS & RECREATION /  
PUBLIC WORKS PROGRAMS COMMITTEE REPORT**

A report (No. CR-FPP 2011-05) submitted by the Finance/Parks & Recreation/Public Works Programs Committee, recommending that the following be received for the record:

“C 2011-75 Communication (02/10/2011) from Council Chair Furfaro, requesting the Administration’s presence to provide the Council with an update on the Kapaia Swinging Bridge Project,” and

“FPP 2011-03 Communication (06/16/2011) from Committee Chair Tim Bynum, requesting agenda time for Angie Westfall, Architecture Branch Chief, Department of Land and Natural Resources, State Historic Preservation Division, to discuss the historic nature of Kapaia Swinging Bridge, which is currently registered on the Hawai’i and National Register of Historic Places,”

Mr. Bynum moved for approval of the report, seconded by Ms. Yukimura, and unanimously carried.

Council Chair Furfaro: Thank you, Mr. Clerk.

Mr. Nakamura: Next matters are Bills for First Reading, Mr. Chair. First bill for first reading is Proposed Draft Bill (No. 2386). This is the bill that was referred to the planning commission on November 24, 2010.

**BILLS FOR FIRST READING:**

Proposed Draft Bill (No. 2386) – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8 OF THE KAUAI COUNTY CODE, 1987, AS AMENDED, RELATING TO THE PERMITTING PROCESS FOR TRANSIENT ACCOMMODATION UNITS: Ms. Nakamura moved to receive Proposed Draft Bill (No. 2386) for the record, seconded by Mr. Rapozo, and unanimously carried.

Council Chair Furfaro: Thank you, next item.

Mr. Nakamura: Next bill for first reading is Proposed Draft Bill (No. 2409.)

Proposed Draft Bill (No. 2409) – A BILL FOR AN ORDINANCE TO AMEND KAUAI COUNTY CODE 1987, AS AMENDED, BY ESTABLISHING A NEW ARTICLE RELATING TO A RETAIL USE CONCESSION AT THE PIIKOI COUNTY BUILDING



Council Chair Furfaro: I believe I had the communication and dialogue with the managing director of the county. They have requested a deferral until approximately the 3rd of August, coming back to the council then, and I do now have that in writing. So I'm looking for a deferral until August 3?

Mr. Kualii moved to defer Proposed Draft Bill (No. 2409) to August 3, 2011, seconded by Ms. Yukimura, and unanimously carried.

Council Chair Furfaro: Thank you, next item.

Mr. Nakamura: Last bill for first reading is Proposed Draft Bill No. 2410. This bill contains the planning commission's recommendations on Bill No. 2386, Mr. Chair.

Proposed Draft Bill (No. 2410) – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUAI COUNTY CODE, 1987, AS AMENDED, RELATING TO THE PERMITTING PROCESS FOR TRANSIENT ACCOMMODATION UNITS: Ms. Nakamura moved for passage of Proposed Draft Bill (No. 2410) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for August 3, 2011, and that it thereafter be referred to the Planning Committee, seconded by Mr. Kualii.

Council Chair Furfaro: Thank you, any discussion? If not all those in favor signify by saying aye.

Councilmembers: Aye.

Council Chair Furfaro: I'm sorry. This is my error. I forgot we went from first reading to second reading, so this is a roll call vote.

The motion for passage for Proposed Draft Bill (No. 2410) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for August 3, 2011, and that it thereafter be referred to the Planning Committee was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chang, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Mr. Nakamura: Seven ayes, Mr. Chair.

Council Chair Furfaro: Next Item.

Mr. Nakamura: Next matter is a Bill for Second Reading, I'm sorry. This is Bill No. 2399, Draft 2. Your Committee on Economic Development & Renewable Energy Strategies has recommended approval of the bill as amended to Draft 2.

#### BILL FOR SECOND READING:

Bill No. 2399, Draft 2 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 23, OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE REGULATION OF BUSINESS AND TRADES: Mr. Bynum moved to adopt Bill No. 2399, Draft 2, seconded by Ms. Yukimura.

Council Chair Furfaro: Vice Chair Yukimura?

Ms. Yukimura: Yes, thank you, Mr. Chair. As was shown earlier on the agenda, this bill, moved out of the economic development committee, is before us today. In our committee, Councilmember Nakamura raised the question, a very good question about the authority to delegate the fee setting by the Council to a division or department, and I believe our county attorney has a ruling on that, verbal ruling. If we could suspend the rules and call him forward.

Council Chair Furfaro: That is permissible at this time. So may I suspend the rules and ask the county attorney if could come up and visit on this particular item. I will be leaving the floor in the hands of the Vice Chair to pose the question.

There being no objection, the rules were suspended.

ALFRED B. CASTILLO, JR., County Attorney: Good afternoon, Council Chair, Councilmembers, county attorney Al Castillo.

Ms. Yukimura: Yes, Mr. Castillo, thank you very much for being here. Can you just tell us whether...or who can do fee setting in the county?

Mr. Castillo: Yes, it has to be done by ordinance, and in this particular case my concern was I didn't have enough facts even last week regarding what was intended on the fee issue anyway. We are unlike O'ahu where in their charter there is a specific wording regarding delegation of that particular duty or endeavor, thank you.

Ms. Yukimura: Any questions of Mr. Castillo?

Council Chair Furfaro: We're dealing with our inability to allocate to other departments.

Ms. Yukimura: We cannot.

Ms. Nakamura: We cannot delegate.

Council Chair Furfaro: We cannot delegate.

Ms. Yukimura: Unlike the city and county which has a provision in the charter which allows them to do that. And I'm going to explore that charter amendment, but for now we can't do it.

Ms. Nakamura: So we have to put the fee structure into this ordinance.

Ms. Yukimura: That's correct, but the office of economic development is not ready to propose any fee structure, and they will be doing a business plan as requested by the Chair. So at that time when they are ready, a fee structure will be proposed.

Ms. Nakamura: Added?

Ms. Yukimura: They'll come before us with a proposed bill.

Ms. Nakamura: So this can move forward with that piece.

Ms. Yukimura: Yes, we would like to move forward. Then they can begin rule making on these specific changes to the ordinance or to the existing law.

Ms. Nakamura: Okay, thanks for the clarification.

Mr. Castillo: You're welcome.

Ms. Yukimura: Yes, thank you for your question.

Council Chair Furfaro: Mr. Castillo, I think you've satisfied the question.

Mr. Castillo: Thank you.

Mr. Bynum: Thank you.

The meeting was called back to order, and proceeded as follows:

Ms. Yukimura: So, Mr. Chair, if we're back in order?

Council Chair Furfaro: Yes, we are.

Ms. Yukimura: I have an amendment to propose which would delete the section, it's section (g) on the last page of the bill, 23-3.8 (g) is being deleted and we're renaming the subsequent section. So I will move to amend as circulated and if there's a second, then I will answer any questions.

Mr. Bynum: Second.

Ms. Yukimura moved to amend Bill No. 2399, Draft 2, as shown in the Floor Amendment amending Section 23-3.8, Subsection (g), attached hereto (see Attachment No. 5), seconded by Mr. Bynum.

Council Chair Furfaro: Okay. We have a motion and second. We're open for some discussion. Mr. Rapozo?

Mr. Rapozo: I guess your amendment doesn't reflect the removal. Your amendment shows an addition of (g), but we already have a (g). And I think it's just a technical thing.

Ms. Yukimura: It says here amended by deleting the section and re-designating.

Mr. Rapozo: Okay, got it.

Council Chair Furfaro: That's acceptable, Mr. Rapozo?

Mr. Rapozo: Yes, thank you.

Council Chair Furfaro: Any more questions of Vice Chair Yukimura and her amendments? Seeing none, we have two amendments here.

Ms. Yukimura: Just one.

Council Chair Furfaro: Just one.

Ms. Yukimura: Yes.

Council Chair Furfaro: I'm sorry; I have to put my glasses back on.

Ms. Yukimura: So it's entitled the July 6 floor amendment amending Bill No. 2399, Draft 2.

Council Chair Furfaro: Got it. So we have a motion and second from Mr. Bynum. Any further questions on the amendment? If not, we'll do a roll call vote on the amendment?

Ms. Yukimura: It's not necessary.

Council Chair Furfaro: Voice vote. All those in favor of the amendment as proposed signify by saying aye.

The motion to amend Bill No. 2399, Draft 2, as shown in the Floor Amendment amending Section 23-3.8, Subsection (g), was then put, and unanimously carried.

Council Chair Furfaro: Very good. Council Vice Chair, you have anything more to add?

Ms. Yukimura: No, this bill has been worked on quite a bit. I want to acknowledge former Councilmember Derek Kawakami who introduced it and the economic development committee chair, Mr. Chang, for facilitating this bill, and also Mr. Costa and Bill Spitz from OED, and our staff Christiane, and Amy Esaki and also Louisa Wooten and Jimmy Trujillo and others who gave input. This does now allow value-added products, but it does connect it to farms because the original purpose of Mr. Kawakami introducing this was to really support farmers and it also adds honey as an allowable product. We hope to encourage the bee industry here on Kaua'i because it is so important to agriculture. I think Councilmember Chang circulated an article that was recently in the newspaper showing...was it 80% of agricultural crops dependent on pollination? I think we have a better law here, assuming we pass it, and something that will support our fledging agricultural industry to grow more and have more locally-grown food.

Council Chair Furfaro: Okay, any further discussion? Mr. Chang.

Mr. Chang. Chairman, thank you. I want to thank Vice Chair Yukimura, thank you very much for spearheading. I know that we've been working on you specifically along with Christiane Nakea-Tresler and our first deputy Amy Esaki. I know you folks have been working for hours, but thank you for taking the ball over from the original concept of Councilmember, now State Representative Derek Kawakami. Mr. Costa is up on the north shore with the celebration of the canoes, but thank you for recognizing him that's been keeping in touch along with Bill Spitz and to Jimmy Trujillo and to Chris Kauai and the rest of the beekeepers and the honey-makers, I think it's a very, very wonderful value-added product there at our sunshine market. And it just gave us an awareness of how much bees are now appreciated as far as produce and food is concerned. So again, Vice Chair, thank you very much. I know that you folks worked really hard on all the amendments and just poring through these documents. So I just want to acknowledge yourself and again say aloha out to our former colleague, State Representative Kawakami. Thank you.

Council Chair Furfaro: Any additional discussion? Mr. Rapozo.

Mr. Rapozo: I just want to clarify that the ordinance won't take effect for another 180 days. So for the people watching that are very happy that they are going to be able to do honey and value-added products, this will not take effect for six months after the mayor signs the bill. So we're looking at probably...

Council Chair Furfaro: Early November.

Mr. Rapozo: Yeah, six months. Is that what it is?

Council Chair Furfaro: No, maybe December, I'm sorry.

Mr. Rapozo: December? February? No, 180 days, that's six months, so yeah, let's all count. July, August, September, October, November, December. It would be a good Christmas present, probably by January 1st. So don't go rushing out to your sunshine markets with your honey yet, please. Just keep track and I'm sure once the mayor signs it, everyone will know. So thank you.

Council Chair Furfaro: Thank you for summarizing the application being in 180 days. Council Vice Chair?

Ms. Yukimura: Yes, I really appreciate that notice, Councilmember Rapozo. And that is for the purpose of creating rules and the office of economic development will be doing that in the next six months.

Council Chair Furfaro: Okay, do we have any further discussion? As we have this bill as amended, I will ask the clerk for a roll call vote.

Mr. Nakamura: Council Chair we're on Bill No. 2399, Draft 2 as amended.

The motion to adopt Bill No. 2399, Draft 2, as amended, was then put, and carried by the following vote:

FOR ADOPTION: Bynum, Chang, Kualii, Nakamura, Rapozo,	TOTAL - 7,
Yukimura, Furfaro	
AGAINST ADOPTION: None	TOTAL - 0,
EXCUSED & NOT VOTING: None	TOTAL - 0.

Mr. Nakamura: Seven ayes, Mr. Chair.

Council Chair Furfaro: Thank you very much. Turn to the next page. I believe we're planning to go into an execution session, so I thought I saw the county attorney. Oh, here we go.

There being no objection, the rules were suspended.

ALFRED B. CASTILLO, JR., County Attorney: Council Chair.

Council Chair Furfaro: You have the floor, sir.

Mr. Castillo: Councilmembers, thank you, Al Castillo, County Attorney. The matters for your consideration are 490, 491 and 492.

ES-490 Pursuant to Hawai'i Revised Statutes Sections 92-4 and 92-5(a)(2 & 4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an executive session with the Council pertaining to the County Auditor and, if necessary, to consult with the County's legal counsel. This session pertains to the evaluation of the County Auditor where consideration of matters affecting privacy will be involved and, if necessary, to consult with legal counsel regarding the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-491 Pursuant to Hawai'i Revised Statutes Sections 92-4 and 92-5(a)(2 & 4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an executive session with the Council pertaining to the County Clerk and, if necessary, to consult with the County's legal counsel. This session pertains to the evaluation of the County Clerk where consideration of matters affecting privacy will be involved and, if necessary, to consult with legal counsel regarding the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-492 Pursuant to Haw. Rev. Stat. sections 92-4 and 92-5(a)(4), and Kaua'i County Charter section 3.07(E), the purpose of this executive session is to consult with Council regarding legal issues relating to medical waste or other solid waste at the landfill and personnel matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Thank you.

Council Chair Furfaro: Thank you. Are there any questions for the county attorney? If not, I would hope when we do move forward on these executive sessions, we'll go to 492 first as it relates to the public works personnel who are here. May I have a motion to go into executive session?

The meeting was called back to order and proceeded as follows:

Mr. Bynum moved to convene in Executive Session, seconded by Ms. Yukimura, and unanimously carried.

Council Chair Furfaro: Thank you. We will meet upstairs in our executive meeting room in approximately five minutes, please. We are recess.

There being no objection, the meeting was recessed at 5:07 p.m.

The meeting was reconvened at 8:21 p.m., and proceeded as follows:

Council Chair Furfaro: Are we ready? Okay. Nadine, would you make that motion again?

Ms. Nakamura moved to reconsider Bill No. 2399, Draft 2, seconded by Mr. Rapozo.

Ms. Yukimura: Is there discussion on a motion to reconsider?

Mr. Rapozo: There is if you want, but it's not necessary. I mean, unless you...

Mr. Bynum: To put on the record why we're...

Ms. Yukimura: Oh yes, it's really my responsibility and I apologize. As we were voting on it, I realized that a language "this ordinance shall take effect within 180 calendar days" meant it could take effect two days after the mayor signed it. "Within" just wasn't the best wording. So we have a new wording that...and I think "within" came up when we were working with George Costa. He said give us at least 180 days. He first said 120 and then he said 180, but if we can do the rules sooner, then that would be fine. So that's how it's worded now, "This ordinance shall take effect 180 calendar days after its approval or upon approval of rules promulgated by the Office of Economic Development, whichever is sooner." So I really apologize, but we're still not on this amendment. That's the reason we're reconsidering this bill, to just clarify that. My apologies for not catching it sooner, so maybe we can have a vote on the motion to reconsider?

Council Chair Furfaro: Okay, we have a motion and it was seconded for reconsideration. Pua, do you acknowledge that?

WILMA (PUA) AKIONA, Council Services Assistant: Yes.

Council Chair Furfaro: Thank you very much, all those in favor of reconsideration?

The motion to reconsider Bill No. 2399, Draft 2, was then put, and unanimously carried.

Council Chair Furfaro: Thank you. We are now reconsidering this particular question about options prior to 180 days.

Ms. Yukimura: So I think I have to move to approve the main bill, which we're now looking at.

Ms. Yukimura moved to adopt Bill No. 2399, Draft 2, seconded by Mr. Bynum.

Ms. Yukimura: Thank you and then I move to amend as circulated, the last section.

Ms. Yukimura moved to amend Bill No. 2399, Draft 2, as shown in the Floor Amendment amending Section 5, attached hereto (see Attachment No. 6), seconded by Mr. Bynum.

Ms. Yukimura: And I've just explained to you all that this wording, which I'm proposing here, would better implement our intentions. So if there's no further discussion, I move the question or ask for the question to be called.

Council Chair Furfaro: Okay, let's hear a voice call on this, all those in favor?

The motion to amend Bill No. 2399, Draft 2, as shown in the Floor Amendment amending Section 5 was then put, and unanimously carried.

Ms. Yukimura: So that's the motion to amend. And now we have the bill before us, motion to approve as amended, and I think we need a roll call vote for this.

Council Chair Furfaro: Eddie, somewhere along the line, you need to call a roll call. Before you do, Mr. Bynum?

Mr. Bynum: No, I'm first.

Ms. Yukimura: He's just helping Eddie remember the order.

The motion to adopt Bill No. 2399, Draft 2, as amended herein to Bill No. 2399, Draft 3, was then put, and carried by the following vote:

FOR ADOPTION: Bynum, Chang, Kualii, Nakamura, Rapozo,	TOTAL – 7,
Yukimura, Furfaro	

AGAINST ADOPTION: None	TOTAL – 0,
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EXCUSED & NOT VOTING: None	TOTAL – 0.
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Mr. Topenio: Seven ayes.

Council Chair Furfaro: Thank you.

Ms. Yukimura: Thank you very much, Chair.

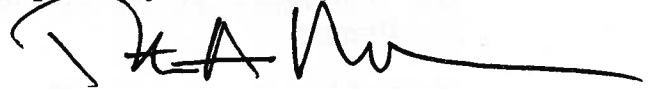
Council Chair Furfaro: Okay, that business is done.

There being no objection, the meeting was recessed at 8:25 p.m.

#### ADJOURNMENT.

The meeting was called back to order and there being no further business, the meeting was adjourned at 10:25 p.m.

Respectfully submitted,



PETER A. NAKAMURA  
County Clerk

/lc/wa



(July 6, 2011)

FLOOR AMENDMENT

Resolution No. 2011-64, relating to Council Rules

INTRODUCED BY: NADINE NAKAMURA

Amend Resolution No. 2011-64 by amending Rule No. 17 of the Rules of the Council of the County of Kaua'i, attached thereto, to read as follows:

**"RULE NO. 17  
RESTRICTION ON EMPLOYMENT OF RELATIVES**

(a) A public officer of the legislative branch of County government may not participate in the decision to appoint, employ, promote or advance; or advocate for the appointment, employment, promotion, or advancement in or to an appointed, non-civil service position in the legislative branch of County government any individual who is his or her relative or domestic partner, or is a relative or a relative of a domestic partner of any public officer.

(b) For the purpose of this rule, "relative" means an individual who is related to a public officer of the legislative branch of County government as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(c) For the purpose of this rule, "domestic partner" means an adult, unrelated by blood, with whom a public officer: (1) has an exclusive committed relationship, (2) maintains a mutual residence, and (3) shares the cost of basic living expenses. A "relative of a domestic partner" means the father, mother, brother, sister, son or daughter of the domestic partner of a public officer.

(d) For the purpose of this rule, "public officer" shall mean members of the Council, the County Clerk and the County Auditor.

(e) This rule shall not apply to individuals appointed, employed, promoted, or advanced prior to the effective date of this rule."

(New material is underscored.)

Passed

47



(July 6, 2011)

FLOOR AMENDMENT

Resolution No. 2011-64, Relating To Council Rules

INTRODUCED BY: JOANN YUKIMURA

Amend Resolution No. 2011-64 by amending Section 6 to read as follows:

“SECTION 6. This resolution shall take effect [upon] thirty days after  
its approval.”

(Material to be deleted is bracketed. New material is underscored.)

V\cs office files\Amendment 2010-12\Section 6 of Rules Reso PM\_ds

Passed

2



(July 6, 2011)

FLOOR AMENDMENT

Resolution No. 2011-64, relating to Council rules

INTRODUCED BY: JOANN YUKIMURA

Amend Resolution No. 2011-64 by amending Rule No. 18 of the Rules of the Council of the County of Kaua'i, attached thereto, to read as follows:

**"RULE NO. 18  
COMMUNICATIONS WITH THE COUNTY ATTORNEY**

Requests for opinions as to questions of law made by individual councilmembers to the County Attorney and such opinions received pursuant to those requests shall be [privileged] confidential communications between the councilmember making the request and the County Attorney if the subject matter of the request and opinion have not been placed on a Council agenda. If the subject matter of the opinion as to questions of law and the request has been placed on a Council agenda, then the request for such opinion and the opinion received pursuant to that request shall be circulated concurrently to other councilmembers but shall remain [privileged] confidential communications with regard to other parties."

(Material to be deleted is bracketed. New material is underscored.)

*Passed*

*#3*



(July 6, 2011)  
FLOOR AMENDMENT  
Resolution No. 2011-64, Relating To Council Rules

INTRODUCED BY: JOANN YUKIMURA

Amend Resolution No. 2011-64 by amending Rule No. 15 of the Rules of the Council of the County of Kaua'i, attached thereto, to read as follows:

**"RULE NO. 15  
AGENDA AND PRIORITY OF BUSINESS**

(a) All communications submitted to the Council shall be time-stamped upon receipt and presented to the Council Chair for disposition.

(b) The Council Chair shall have the discretion to schedule items to manage the business of the Council's agenda. All communications to be placed on the agenda must be initialed by the Council Chair and received by the Council or the Office of the County Clerk before 4:30 p.m. on the Friday two weeks preceding the day of the regular or Committee meeting. Communications by a Councilmember shall be placed on the agenda within one hundred twenty (120) days of the date of the written request by a Councilmember to the Council Chair.

(c) The Council [or committee] may place on the regular Council meeting agenda a consent calendar of items that may be approved without presentations, clarifying questions, or debate. All items on the consent calendar may be approved by a single motion. A member may request that an item be removed from the consent calendar for discussion and separate action. Any item so removed shall be considered after the vote upon the consent calendar. The [Presiding Officer] Council Chair may determine the most appropriate place on the agenda for the removed item.

(d) The Clerk shall prepare and post an agenda for all meetings of the Council and its Committees in compliance with the provisions of Chapter 92, H.R.S. Notices and agendas for all regular, standing committee, special and executive session meetings shall be posted on the County of Kaua'i's website. Failure to post notices and agendas on the County of Kaua'i's website shall not invalidate any action taken by the Council or its committees if the notice or agenda was given or posted in accordance with Chapter 92, H.R.S.

(e) Pursuant to Chapter 92, H.R.S., the Council or Committees shall not change the agenda, once filed, by adding items thereto without a two-thirds recorded vote of all members to which the body is entitled; provided that no item shall be added to the agenda in the manner provided herein if it is of reasonably

*Passed*

*#4*

major importance and action thereon by the body will affect a significant number of persons.

(f) The Council may, by previous motion, direct that any matter shall be made a special order of business, which shall take precedence of all business after the fifth order, or that it shall take any other position lower down on the calendar.

(g) The unfinished business in which the Council was engaged at the time of the last adjournment shall have preference in the Order of the Day, and no business shall be received until such unfinished business is disposed of, unless by special leave of the Council.

(h) All questions relating to the priority of business to be acted upon by the Council or Committee shall be decided without debate."

(Material to be deleted is bracketed. New material is underscored.)

v\cs office files\Amendments 2011-12\Council Rules Rule 15 PM\_ds



July 6, 2011  
FLOOR AMENDMENT

BILL NO. 2399, Draft 2, Relating to the Regulation of Business and Trades

Introduced by: JoAnn A. Yukimura

Bill No. 2399, Draft 2, is hereby amended by deleting the proposed Subsection (g) of Chapter 23, Section 23-3.8 and redesignating proposed Subsection (h) as the new Subsection (g) to read as follows:

“SECTION 2. Chapter 23, Section 23-3.8, Subsection (g) Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

(g) Vendors at the Sunshine Markets may offer recyclable paper bags and/or reusable bags for sale to customers.”

(New Material is underscored.)

V\CS OFFICE FILES\AMENDMENTS\2010-12TERM\FA-added value sunshine 2399d2 for 7-6-11 CNT\_ds

*Passed at July 6, 2011 Cnd mtg.*



July 6, 2011

FLOOR AMENDMENT

Bill No. 2399, Draft 2, Relating to the Regulation of Business and Trades

INTRODUCED BY: JoAnn Yukimura

Bill No. 2399, Draft 2, is hereby amended by amending Section 5 to read as follows:

“SECTION 5. This ordinance shall take effect [within 120] 180 calendar days after its approval[.] or upon approval of rules promulgated by the Office of Economic Development, whichever is sooner.”

(Material to be deleted is bracketed. New material is underscored.)

passed at reconsideration on July 6, 2011 (nd Mtg #2)

